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HOUSING FINANCE REFORM: NATIONAL MORTGAGE SERVICING STANDARDS

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

ON

EXAMINING NATIONAL MORTGAGE SERVICING STANDARDS AND HOUSING FINANCE REFORM

AUGUST 2, 2011

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C O N T E N T S

TUESDAY, AUGUST 2, 2011

WITNESSES

HOUSING FINANCE REFORM: NATIONAL MORTGAGE SERVICING STANDARDS

TUESDAY, AUGUST 2, 2011

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10:03 a.m., in room SD–538, Dirksen Senate Office Building, Hon. Tim Johnson, Chairman of the Committee, presiding.

OPENING STATEMENT OF CHAIRMAN TIM JOHNSON

Chairman JOHNSON. Good morning. I call this hearing to order.

Thanks to all of our witnesses for joining us this morning. I would also like to recognize that, for the first time, we have a witness joining us by Skype. Professor Peter Swire is in Oregon but was kind enough to start his day early for our hearing.

Today we will continue the Committee's oversight of problems in the mortgage servicing industry and explore the need for a national mortgage servicing standard.

The housing recovery appears to have stalled—in part because of widespread uncertainty in mortgage servicing. Borrowers are not certain that servicers are accurately evaluating them for modifications. Servicers are not confident that borrowers' documents were submitted properly. And investors are concerned about how all these factors increase litigation risk for servicers. Homes that should move through the foreclosure process are held up because courts and servicers are concerned that paperwork has not been completed properly.

We need rules of the road so that borrowers, investors, and servicers have a clear understanding of the process to follow both when a borrower is current on payments and also in the unfortunate event that a borrower becomes delinquent.

Since our first servicing hearing in November of last year, the Federal banking regulators have found significant problems and issued consent orders to 14 large servicers; the Federal Housing Finance Agency amended its seller-servicer guidance to align Fannie Mae and Freddie Mac's standards for servicing and improve borrower contact; and the Treasury Department's HAMP program began issuing servicer report cards—which did not show promising improvements.

Even more recently, Reuters and AP released investigative reports detailing ongoing problems in mortgage servicing. I would like to place those reports into the record.

Given the variety of standards and the continuing problems that I have mentioned, it is important that we explore a national mortgage servicing standard.

Several Members of this Committee have already introduced legislation to create such a standard and mitigate the foreclosure crisis. Senator Reed is a consistent leader on this issue, introducing legislation last Congress and again this Congress. I would also like to recognize Senator Merkley and Senator Brown for their legislative efforts.

Senator Menendez has also helped in the Committee's oversight of this issue with a productive hearing in the Housing Subcommittee.

This is an important issue, and the Committee will continue to exercise its oversight responsibility.

Before I turn to Senator Corker, I would like to thank him and his staff for working with me and my staff on these housing finance reform hearings. Housing finance reform is a large topic that requires our attention in all aspects, and these hearings will help us better understand the areas that need reform.

Senator Corker.

STATEMENT OF SENATOR BOB CORKER

Senator CORKER. Thank you, Mr. Chairman, and thanks for having this hearing. And I certainly welcome all the witnesses, both here and afar, and appreciate your testimony. I know we are going to be talking a lot about servicing today, and the point of view I would like to put forth is if we do that without paying attention to the mortgage investors, then we are going down the wrong track. We have got to have private capital back into mortgages, or rates certainly will not continue to be low right now, and obviously we are not going to ever get the private market involved unless we take that into account.

I know we know there are two fundamentally different ways of going at servicing right now. One is the large, large banks, and the other is the community banks around the country. And as we look at either regulations or potentially new laws, we need to take that into account.

So I welcome you here today. I look forward to your testimony. And, again, I hope whatever we do we continue to remember that getting private capital back in the mortgage market ultimately has to be a big part of what it is we are focused on. So thank you, and I look forward to your testimony.

Chairman JOHNSON. Before we begin, I would like to briefly introduce our witnesses who are here with us today.

Our first witness is Mr. Jack Hopkins, a long-time friend and a personal resource for me on many South Dakota community banking issues. Jack is the president and CEO of CorTrust Bank, a community bank that serves both South Dakota and Minnesota.

Ms. Faith Schwartz is the executive director of the HOPE NOW Alliance.

Mr. Robert Couch is a counsel at the law firm of Bradley Arant Boult Cummings LLP and a former General Counsel at HUD.

And, finally, we have Professor Peter Swire, who is appearing before the Committee via teleconference. Professor Swire is a professor of law at the Ohio State University and also a senior fellow at the Center for American Progress.

I welcome all of you here today and thank you for your time. Mr. Hopkins, you may proceed.

STATEMENT OF JACK HOPKINS, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CORTRUST BANK, SIOUX FALLS, SOUTH DAKOTA, ON BEHALF OF THE INDEPENDENT COMMUNITY BANKERS OF AMERICA

Mr. HOPKINS. Thank you. Chairman Johnson, Senator Corker, Members of the Committee, I am Jack Hopkins, president and CEO of CorTrust Bank, a $660 million asset bank headquartered in Mitchell, South Dakota. As a third-generation community banker, I am pleased to represent ICBA's nearly 5,000 members at this important hearing.

As this Committee considers the development of national mortgage servicing standards, I have an important point to make. Community banks are successfully servicing their portfolios and do not have the widespread servicing problems reports in the press. I urge you to ensure any effort to create national standards does not add to the regulatory burden of community banks. We must preserve the role of community banks in mortgage servicing, or you will see further consolidation which will only harm borrowers, especially those in rural and underserved housing markets.

CorTrust Bank was founded in 1930, at the outset of the Great Depression, and was built, tested, and proven under historically challenging economic conditions. We survived the Great Depression and numerous recessions by practicing conservative, commonsense lending. We have emerged from the crisis well capitalized and ready to lend to support the recovery. CorTrust Bank serves communities in 16 South Dakota cities, from Sioux Falls to rural communities with populations of less than 150.

Residential mortgage lending has been an important component of CorTrust's business since its founding and has grown more important over the years. Today we have a $552 million servicing portfolio consisting of approximately 5,000 mortgage loans.

Over the years, we have discovered that mortgage lending is a great way to cement long-term relations with customers and win the opportunity to serve their additional banking needs. To further bolster our customer relationships, we need to service these loans, whether they are subsequently in the secondary market or held in portfolio. Customers do care about who services their loans. They value and even seek out local servicing.

Much of our recent business has come from refinancing mortgages away from large lenders whose borrowers are frustrated with remote servicing. Even though at its best it is a break-even business for us and loan for loan it would be more profitable to release servicing, we choose to service in-house because it is central to our community bank business model.

The success of community bank servicing is based on close ties to customers and communities. Because CorTrust Bank's servicing team consists of only four people, customers always know who is on the other end of the telephone or across the desk.

A customer who dials our 1–800 number will generally get one of two people on the line. A customer can walk into one of our 24 locations and deal with a staff person face to face.

Smaller servicing portfolios and better control of mortgage documents also provide an advantage over the large servicers. For these reasons, community banks have generally been able to identify repayment problems at the first signs of distress. Our staff will contact a late customer on the 16th day, the first day of delinquency, and find out what their circumstances are and discuss solutions.

Personalizing servicing combined with conservative, commonsense underwriting yields exceptional results. Our average delinquency rate of 1.7 percent is about one-third the national average and is consistent with other community bank portfolios. In the history of CorTrust Bank, only a handful of mortgage loans have gone into foreclosure.

Overly prescriptive requirements should not be applied across the board. There are many examples of harsh new requirements. Many of the proposals I have seen would require us to establish a call center, a prohibitive and unnecessary expense for a community bank the size of mine. The new Fannie Mae standards, published in June and scheduled to go into effect on September 1st, are overly prescriptive and will reduce our flexibility in using methods that have proven effective in holding down delinquency rates.

I ask this Committee to urge the Federal Housing Finance Agency to delay implementation of the new standards for small lenders with a record of strong performance.

We are also concerned that the FHFA's new compensation proposal would sharply reduce servicing revenue that currently only covers costs. Moreover, this proposal creates a perverse incentive by rewarding the originators and servicers of nonperforming loans and punishing community banks. The most significant risk in applying standards that are too rigid and prescriptive and in reducing servicing income is that it would cause many community banks to exit the mortgage servicing business and accelerate consolidation. Any national standards developed by Congress or the regulators must exempt community banks. I urge you not to tamper with our success.

Thank you for holding this hearing and for the opportunity to present the good story of community bank mortgage servicing. I will be happy to take your questions.

Chairman JOHNSON. Thank you, Mr. Hopkins.

Ms. Schwartz, you may proceed.

STATEMENT OF FAITH SCHWARTZ, EXECUTIVE DIRECTOR, HOPE NOW ALLIANCE

Ms. SCHWARTZ. Thank you. Chairman Johnson, Senator Corker, and Members of the Committee, thank you for the opportunity to speak here today. My name is Faith Schwartz. In 2007, I joined the HOPE NOW Alliance as its executive director.

The foreclosure issues we faced in 2007 were viewed as short-term subprime issues, and most people thought it would take a year or two at most to work through. I am approaching my fifth year at HOPE NOW. The crisis has not abated for many homeowners. It affects prime credit and nonprime credit borrowers alike.

At times we have been discouraged by the scale and the persistence of the problems faced on the foreclosure front. But through perseverance and continued efforts by our alliance members, including servicers, counselors, and Federal and State offices, we are seeking more and more homeowners being helped. We measure some successes by the 4.6 million permanent modifications completed through May of 2011.

Other efforts have been more difficult to measure. Sadly, there are cases where homeowners fall through the cracks, and the industry is persevering through the worst housing crisis since the Great Depression. Finding ways to help homeowners achieve stability, we are still here doing what it takes through many different channels to help homeowners find resolution. And the comments today are my own and not necessarily shared by all HOPE NOW members.

I am here to recommend the importance of achieving national servicing standards. Many efforts are underway toward this goal, but to achieve it will require extraordinary cooperation and communication among industry, Government, and other concerned parties. We all must improve the customer experience for homeowners at risk of foreclosure. Uniform clear standards would be a strong step in that direction.

Current economic conditions—underemployment and unemployment in particular—are challenging for customers who are trying to maintain their home. Many at-risk homeowners are frustrated by the inconsistent messages from some loan servicers when they ask for help. Servicers have made real improvements here, but more needs to be done to create the confidence in the servicing system.

Let me be clear. National servicing standards may not change the final outcomes for many homeowners at risk of foreclosure. All mortgage customers need consistent servicing processes that give them timely responses and information on their options when they experience difficulty in staying current on their mortgage.

I will address two of the most prominent issues in servicing: the desire to have a single point of contact and the dual-track processing of loans going to foreclosure versus the modification process.

To a frightened homeowner, the single point of contact is one way to lessen the confusion and explain to homeowners what steps are required by servicers, investors, and State law. It is important to emphasize that the servicing system is facing completely different challenges in today's environment than it was designed to manage. Over the years mortgage servicing developed some uniformity in part because the standards for many loans were set by the GSEs and FHA guidelines.

FHFA, Fannie Mae, and Freddie Mac remain the biggest influence on servicing practices and standards today. For many years that worked well, but servicing was primarily a simple task of processing loan payments on performing loans. Delinquent loans and troubled borrowers generally were handled by repayment plans or the sale of a property at a profit. The current housing crisis completely shifted the demands on the mortgage servicing, and servicers must now manage millions of delinquent loans and work with the borrowers on more complex solutions such as modifications and re-underwriting of loans.

Since initiating the homeowners outreach events in 2008, HOPE NOW has hosted over 112 events. We have tracked participating homeowner satisfaction to gauge our success and adjust the outreach model accordingly. In the past 2 years, HOPE NOW and the U.S. Treasury's Making Home Affordable has worked together on outreach. Over half of the borrowers rate these workshops' experience as excellent.

And, surprisingly, we continue to find that 35 and 40 percent of the participating homeowners are first-time contacts with their loan servicers. We have seen a change in the circumstances of at-risk borrowers for up to 30 percent who are unemployed. Unemployment significantly affects the type of aid available and highlights the obvious challenges we face in this crisis.

This offers some insight to the importance of customer experience regardless of the outcome, and it reinforces the need for multiple ways to communicate with borrowers who need assistance. There are multiple efforts underway to improve and establish servicing standards, particularly for helping at-risk homeowners. A single uniform standard is needed, but current initiatives must be evaluated, coordinated, and ultimately combined to set national standards.

There are many rules and standards that have been put in place by the various agencies. We have the recent OCC consent orders for the top 14 banks. We have unique Fannie Mae, Freddie Mac, and FHA servicer guidelines. We have proposed risk retention under Dodd-Frank, which includes servicing standards. We have FHFA, Fannie Mae, Freddie Mac, and Ginnie Mae setting a new compensation servicing model that affects performing loans and nonperforming loans. We have the Treasury under Making Home Affordable offering recent directives on single point of contact and a 1-year forbearance plan. Note the forbearance plan does not apply to Fannie Mae, Freddie Mac, or VA loans.

State Attorneys General are under confidential discussions with top banks to discuss practices and processes that will indeed lead to standards. The soon-to-be CFPB efforts and interagency guidelines are also being looked at to effect standards. All of these efforts must be evaluated before any decision is made on any single uniform standard.

Just a quick note. I did visit a shop recently, and I wanted to see what they had implemented on the single point of contact. Hundreds of people were being trained to handle the single point of contact rule. Training lasted for 6 weeks. Once the training was complete, employees had several large black binders of which to navigate for all the different programs and processes they had to deliver the message on about what the options were for the borrower.

The training objective for new hires was to bring consistency, empathy for the customers, and accuracy regarding the description of the options available for the borrowers as well as access to information that would be relevant to the borrower over the course of the eligibility review.

The training task seemed daunting, but it was indeed impressive. And some companies are dealing with licensing single point of contact on the origination process if they are subject to the SAFE Act under several State laws.

It was enlightening to see how the directives were being implemented in the real world. All changes must get adapted into systems, processes, and work flows to educate and train the full workforce, who in turn will need to communicate internally and externally on all these directives. And as a reminder, the single point of contact is not the person who will perform any of the underwriting, any of the modifications, or any of the sale processes if there is a short sale in place.

We believe the efforts by various entities currently underway are moving in a positive direction to elevate servicing standards and improve the customer experience. Increased coordination by all entities is needed in order to make things happen in a timely fashion.

In summary, we recommend the Administration gather all of the involved parties together to review the servicing standard initiatives to ensure that definitions and policies agreed to by regulators, enforcement agencies, and investors align with one another. That is the time to ensure a uniform set of standards can be identified and established. Reducing confusion and friction from the system is very important. As Senator Corker initially noted, bringing private capital back to the market is of utmost importance, so looking at standards must be done thoroughly and cautiously.

The home mortgage is the most important investment in the lives of many consumers, and it is essential that we get it right, and the communication to the consumer of the process and servicing that comes with this investment. The industry nonprofit partners and servicer members are committed to working to improve mortgage servicing for consumers.

Thanks for the opportunity for letting me speak today.

Chairman JOHNSON. Mr. Couch, you may proceed.

STATEMENT OF ROBERT M. COUCH, COUNSEL, BRADLEY ARANT BOULT CUMMINGS, LLP

Mr. COUCH. Good morning, Chairman Johnson, Senator Corker, and other Members of the Committee. Thank you very much for letting me appear today to talk about this important issue.

I am not going to spend a lot of time on my background, but to establish my *bona fides,* I was General Counsel of HUD, President of Ginnie Mae, president of one of the most active mortgage lenders in the South, chairman of the Mortgage Bankers Association, and president of the Mortgage Bankers Association of Alabama as well.

First and foremost, I am not here to defend the industry or be an apologist for the industry. Mistakes have been made, and there have been some abuses of particular processes. But I am here to speak about three issues: certainty, fairness, and State law. I would like to cover all three of those in the limited amount of time I have.

I would like to start by telling you a story about the last time I refinanced my own mortgage, about 10 years ago. At the closing table the agent handed me a document about 15 pages long, a mortgage. And he said, "Rob, do you know what this is? Do you know what it says, what it means?" I said, "Well, I think I do, but tell me what you think it means." He said, "It is very simple. If you pay, you stay. If you don't, you won't."

Now, this may seem unduly harsh to a lot of people, but it is, in fact, the essence of the transaction and the essence of this hearing in many ways.

It is, I think, instructive to briefly talk about how the process works. Someone wants to borrow money, goes to a lender, establishes what their likelihood of repaying that mortgage is or that loan is, and offers the home that they are about to buy or refinance as collateral, as security for the mortgage. At closing they get the money. In return they sign a note that says, "I promise to pay this money back, and to secure that promise, I give you the right to take my home if I do not pay that money back."

That certainty in the process allows that loan then to be sold in the secondary market, many times to pension plans that you or I may be beneficiaries of, and the money is recirculated in the marketplace. That is the way the process is supposed to work.

But, unfortunately, over the past several years, a lot of uncertainty has, as you mentioned, Chairman Johnson, crept into the process, and that uncertainty has been in the form of stretching out the period of time that it takes to foreclose on the loan. Today it takes, on average, about 400 days from when a person quits paying their mortgage to when the foreclosure process is completed. In some States—New Jersey, New York, Florida—it is a much longer process. And the uncertainty that has crept into the process has made the functioning of the market much more treacherous.

If you look today, well over 90 percent of all mortgages, in order to be done, have to be guaranteed directly by the Federal Government for the mortgage process to take place. Or by way of illustration, if you look over the past 3 years, there have been two private label securities backed by mortgages done in this country, worth about $500 million. By comparison, if you go back to 2006, there were hundreds of securities totaling $723 billion done in that year alone—a thousandfold decrease for a 3-year period. So the process has dramatically been affected by this uncertainty, and you need to be aware of that.

Fairness is also a very important issue, and many of the efforts that we have seen lately have been designed to be compassionate to those who cannot or will not pay their mortgages on time. And I certainly understand that, but that overlooks the need to be fair to those folks that have been very diligent in paying their mortgages, which is the vast majority of people in this country who have mortgages. The effect of that stretching out of the foreclosure process and the uncertainty I mentioned before has been to dampen real estate values across the board across the country for those folks that have been diligent in paying their mortgages, and I would hope that you would take those folks into consideration in your deliberations.

And, finally, State law. I am not here to advocate for or against a uniform national standard, but I would remind the Committee that there are 50 States out there with procedures set up to protect both borrowers and lenders in the process and make sure the process runs smoothly. I would hope that you would be mindful of all of those 50—really 51, State and, in the case of D.C., the district laws designed to do just that.

In sum, in conclusion, please be mindful of certainty, please be mindful of fairness, and please be mindful of State law. And please be deliberate about this process.

Thank you very much for the opportunity to talk to you today, and I would be happy to answer any questions.

Chairman JOHNSON. Thank you, Mr. Couch.

Professor Swire, you may proceed.

STATEMENT OF PETER P. SWIRE, C. WILLIAM O'NEILL PROFESSOR OF LAW, MORITZ COLLEGE OF LAW OF THE OHIO STATE UNIVERSITY (VIA TELECONFERENCE)

Mr. SWIRE. Thank you, Chairman Johnson and to other distinguished Members of the Committee. Thank you for inviting me to participate in this hearing on national mortgage servicing standards.

As you are aware, I previously committed to speak in Oregon today, and I thank the Committee and its staff for the great flexibility of having me testify online today. I believe that using these online technologies can continue to open up Congress and our political process to participation by the American people.

My testimony today draws on two previously published items which I have provided to the Committee. The first is a report on mortgage servicing that I published in January of this year. The second is an article in the *Los Angeles Times* from March which describes some of my personal experiences as a homeowner with the mortgage servicing industry.

As you said, Mr. Chairman, I am now a law professor at the Ohio State University and a Senior Fellow at the Center for American Progress. In 2009 and 2010, I was Special Assistant to the President for Economic Policy, serving under Larry Summers on the National Economic Council. At the NEC, my biggest task was to coordinate the interagency process for housing and housing finance issues. In this role, I worked extensively on mortgage servicing issues and Fannie and Freddie and the FHA, and in that role, I met regulated mortgage servicers as well as many other stakeholders.

My January report was called, "What the Fair Credit Reporting Act Should Teach Us About Mortgage Servicing." The report makes a simple point. The sorts of market failures that led to the creation of the FCRA in 1970 also exist today for mortgage servicers. The single most important fact is that the consumers, the homeowners, are not the clients. The clients for the credit reporting agencies are the companies that pay for the credit reports, the lenders and employers. The clients for the mortgage servicers are the companies that pay the services, and those are the investors in mortgages. Mortgage servicers owe their legal duties and market loyalties to the investors, not the homeowners.

Now, in saying this, I am talking about when mortgage servicing rights are sold, and that appears not to be the model that Mr. Hopkins's bank follows, where they keep the servicing in-house, close to the market. But the large majority of mortgage servicing rights today are sold out into the market to new buyers of servicing, often the biggest banks.

So the structure of the market that we have today leads to problems. Consumers have no market or legal checks on the servicer. The homeowner does not choose the service. That choice is made by the company usually the one that originates the loan. If the homeowner has a bad experience with the servicer, as so many people have, the homeowner cannot even quit. Even if the homeowner refinances a loan to get away from the servicer, the servicing market is so concentrated that the homeowner may get the same servicer all over again the next time.

Homeowners not only lack any market choice, but they currently lack legal remedies if the servicer performs badly. That is why national standards for mortgage servicing are so important. Where there are no market forces to protect consumers, then something else should fill the gap. An effective set of consumer rights could be embodied in national mortgage servicing standards and I hope that will happen.

Now, I will turn to my dispute with Washington Mutual's servicing arm in 2006 and 2007. To prepare for this testimony, I have brought along and reviewed and provided to the Committee files from my 21-month dispute with Washington Mutual in 2006 and 2007, before the crisis, about flood insurance that they incorrectly placed on my family's home in Bethesda, and that dispute was the subject of the *Los Angeles Times* article.

Our family was a target of what people have called "force placed insurance" and that this Committee has heard about before. In early 2006, WaMu asked for proof of flood insurance coverage. My State Farm agent immediately faxed them the information. It turns out that WaMu had a really cute trick that I discovered after numerous phone calls. They did not even process the proof of coverage unless it contained WaMu's servicing accounting number. So WaMu received the State Farm certification and simply ignored it and did not tell us until I found it out several months later, and that was how WaMu could bill my family for the duplicate flood insurance.

The next cute trick was to pile up late fees on our monthly mortgage payment. We had automatic payment the first week of every month, and even WaMu admitted we never missed a payment. WaMu's practice, though, was to charge for the duplicative flood insurance with each monthly payment. That meant they considered our payment too small each month by the amount of that insurance premium. So then they declared our entire monthly payment late and charged a late fee of over $170 a month.

I provided the Committee staff with detailed and contemporaneous documentation of these and numerous other problems with our servicer. Eventually, after 21 months and over 50 calls to customer service, they finally agreed in late 2007 to withdraw the flood insurance and cancel the fees.

In conclusion on this, I feel fortunate that I was able to get my family's dispute resolved and cancel over $4,000 in erroneous fees that they wanted to charge me. Most homeowners, however, are not banking law professors. All of those hours sitting on hold, waiting for customer service, gave me plenty of time to think about the flaws in our mortgage servicing system.

My experience in Government and since has taught me there are numerous hard-working and talented individuals in the mortgage servicing industry. I admire the work of Faith Schwartz and Hope Now and many others. The incentives, however, do not work for consumers.

In response to Senator Corker's opening statement about getting private capital back into the market, a goal I very much share and the Administration has shared, fixing servicing, which is getting the money to flow properly from the homeowner to the investor is an essential part of reform. And so I agree that working on national mortgage standards should be seen as part of getting the investor part of the thing to work, as well.

In short, in the absence of market discipline on servicers, an effective national set of mortgage standards is essential. There is no other way to have consumers protected.

I thank the Committee for its attention to these matters and I welcome any questions you may have.

Chairman JOHNSON. Thank you, Professor Swire.

Mr. Hopkins, small servicers, like your bank, have not been caught up in the problems that large servicers have. Is that just due to your size or do you believe that there are other factors?

Mr. HOPKINS. I think that it starts up front. I think we had strict underwriting standards and we always held strict underwriting standards. We were not offering a lot of the exotic products, the Alt ARMs and some of these things that are creating the problems with the foreclosures now. We did not believe in the products. Therefore, we did not offer the products.

So because servicing is a very low-margin business, we felt it was important to have a good quality portfolio, so we were always conscious about underwriting our loans very strict up front. I think it starts right with the underwriting. We keep our loans in-house. Therefore, we are concerned about what we put in our portfolio.

Chairman JOHNSON. Mr. Hopkins, like mortgage origination, there has been a significant consolidation in the mortgage servicing industry and the largest banks now service the majority of the loans in the country. Have borrowers and communities benefited from this consolidation?

Mr. HOPKINS. Absolutely not. I think that is part of the problems that Professor Swire was dealing with a little earlier. You know, an article I saw in 2010 showed that the four largest servicers control 70 percent of the market. So they do not have the customer contact that we do. I think that if it was a more diverse market in the servicing side, that the customers would have a better experience.

Chairman JOHNSON. Professor Swire, in your testimony, you recommend a Fair Credit Reporting Act equivalent for mortgage servicers. Can you expand on what that should include, and how could it prevent some of the problems we are currently seeing?

Mr. SWIRE. Thank you, Senator. There are many people working on the details of what the standards should look like. I think the point with the FCRA is if there is a mistake being made about the customer, we actually can go fix it these days, and when we had mistakes with the servicers, we did not have those same kind of legal rights, and that is part of what I am point out. I think single point of contact is clearly a step in the right direction and the standards should address issues around dual track so that when people are getting something fixed, they do not suddenly have the house yanked out of them, that is part of it. Having disclosures and avoiding conflicts of interest to make sure that the servicer is doing what is right for the investor and the customer and not for other parts of his portfolio, I think those are some of the main categories of things you would like to see in the standards.

Chairman JOHNSON. Ms. Schwartz, with a number of different standards being put forward, would a national mortgage servicing standard help provide clarity for servicers, homeowners, and investors?

Ms. SCHWARTZ. Senator, yes, we do believe there is a strong need for some coordination and alignment on what is going on today with the regulatory efforts and others on servicing standards. I would caution the Senator to let this fall out to find out what is finally happening with the standards through the AG discussions and the OCC consent orders as we see how it works through the system before there is another effort to make new standards without testing how these are coming through.

Chairman JOHNSON. Mr. Couch, in your testimony, you argued that homeowners have not been harmed by the problems in mortgage servicing. Do you disagree with the assessments and subsequent required changes imposed by the Federal banking regulators and by FHFA?

Mr. COUCH. Senator, in my testimony, I said that in the event that a borrower has been damaged, he or she should be entitled to be made whole for those damages. In terms of harm, it is important to keep in mind that in the case of foreclosures and this foreclosure process, as I mentioned before, the length of time during that 400-plus days, depending on what State you are in, while the process is working, that borrower is not monetarily damaged. In fact, that borrower is living rent-free, so to speak, during that period of time.

Now, there are in place in all 50 States mechanisms for making, if there are damages, making the borrower whole, and I am suggesting that in every case that should take place. But I think it is important for the Committee to look at who is actually being damaged in this process.

Chairman JOHNSON. My time has expired.

Senator CORKER. Go ahead. I will use that chit later.

Chairman JOHNSON. Yes. Yes.

[Laughter.]

Chairman JOHNSON. I will proceed to a second round if need be. Senator Corker.

Senator CORKER. There are so few of us here, I am more than glad for you to take all the time you need, from my perspective.

But to the witnesses, again, thanks for your testimony. One of the folks in our office, as we were getting ready for this hearing, was talking about the fact that a year or so ago, they had a decision to make as to who they would borrow money from because they, obviously, being a staffer, had had experience with what happens with mortgage servicing. They looked at borrowing money from a community bank, where they would actually know the person on the other end of the line, and, on the other hand, looked at some of the larger institutions where the rates were actually cheaper but they knew they might be put through a meat grinder if something happened.

And so I use that example to say the customers do have a choice. I mean, they can choose to go to a smaller institution and maybe pay a higher fee but have that personalized service, or go to one of these larger institutions where your file might be in a warehouse in Kansas someplace. So there is a difference there, and I know it was a difference that, when I used to borrow money for commercial loans, I paid attention to.

And I am just wondering, Ms. Schwartz, what your response would be to that. I mean, people do have a choice.

Ms. SCHWARTZ. Sure, Senator Corker. They do have a choice, and I would say in the evolution of a $3 trillion market, there was a lot of buying and selling of mortgages, small lenders and large ones. Today, most of the mortgage market is controlled through the investor guidelines, through Fannie Mae, Freddie Mac, and FHA, of which most—many lenders participate, and those guidelines really govern how they are serviced.

But to your point, there are choices to be local with your community banker and go in and see how your payment was applied versus online or 800 numbers to find out how it is being processed with larger organizations. There is always a choice. But they have the right to buy and sell those loans today, and some do.

Senator CORKER. And that is a good point, and so as we—a lot of the things that we do around here, I mean, we look at some of the regulatory practices that were put in place with Dodd-Frank. There is a concern that that just creates greater consolidation over time. So is there any concern by any of the witnesses that if we put in place uniform standards by law that there will be consolidation and maybe it gets even more difficult than it is?

Ms. SCHWARTZ. If I could follow up on that, I believe you can have standards and have appropriate protections in place for smaller servicers or banks that have too much cost and burden with that, but you can have standards that are fair to customers and protect——

Senator CORKER. Now, how would that work exactly, because we just went through that with debit and interchange and none of the community bankers felt like that worked too well. Even though they were protected, they know, over time, the market is going to migrate away from them if they are charging a higher fee than the large institutions. So that is a nice thing to say, but tell me how that would actually work, and anybody else that wants to chime in would be helpful.

Mr. SWIRE. I would have an idea, but do you want to go——

Senator CORKER. Go ahead.

Mr. SWIRE. OK. I did not want to step on Faith. So one of the basic distinctions for mortgage servicing rights is whether the bank retains the servicing, keeps them there in their community bank or whether they get sold to somebody else to do the servicing, and you can write rules to say, if it is retained, the customer chose that bank. It is being serviced by that banking organization. You could also have a dollar limit if you want to, so that applies up to some amount, so that the smaller banks that retain servicing are more likely the whole time you have a customer relation, but once it is sold out into the national market, that is where the standards apply.

Ms. SCHWARTZ. If I could—oh, go ahead.

Mr. HOPKINS. First, if I may step in, one, I think that you have already defined in here what a small, or a large investor is. In the Fannie Mae guidelines, I think it defines 65,000 loans as being a small market investor or small servicer.

As far as for the cost, what we are looking at, we do some servicing for some other banks, primarily for the South Dakota Housing Development Authority loans, because there are only six servicers in the State, so I caution that anything—you know, we do some servicing for other banks, so we do buy some servicing. But the vast, vast majority, 90-some percent, probably 98 percent, is our own originated product. So I would argue that if we are doing our own product, we are looking not to increase the standards that are so prescriptive. They are looking at things that would almost force us to have a call center implemented in order to do that, in order to track all our contacts with customers.

And to your point earlier when you were talking about the cost of a mortgage at a community bank versus a large bank, I do not think, with the markets the way they operate today, there is a difference in cost, particularly with the new incentive rules. So I think that the pricing is virtually identical between a large and a small servicer. We advertise that we service locally. That is one of our key advertising points and we are proud of that. And that brings us in business.

Senator CORKER. But I assume you still do not want national standards that are the same for you as they might be for JPMorgan or somebody like that, is that——

Mr. HOPKINS. No, we do not. I mean, we do not want the standards that are very prescriptive. We have been successful. Our delinquency rate shows that. We have been very successful in servicing, so I am cautious that we have standards that are requiring us to contact people on nights and weekends when we do not have those type of issues. Our biggest issues is whether they pick up the phone. We have gone to the point of using cell phones so they do not identify the number when they are collecting, and we change the number monthly.

Senator CORKER. Thank you. I noticed I am over my time, Mr. Chairman.

Chairman JOHNSON. Ms. Schwartz has a comment to make.

Senator CORKER. OK.

Ms. SCHWARTZ. Oh, I would just say, I think there are ways to create standards where the regulatory oversight body can work with the smaller community banks or others to say, are you satisfying single point of contact? Do you have a customer service or abandonment rate that is very low that you are really taking care of your customers? And of course, they just testified they do. But larger companies may have different processes in place because they are a higher volume shop and, therefore, they need some different structural concepts. In all cases, though, there are ways to be flexible with standards to accommodate customer protections as well as the banks' and investors' needs.

Senator CORKER. Thank you.

Chairman JOHNSON. Senator Menendez.

Senator MENENDEZ. Well, thank you, Mr. Chairman. Mr. Chairman, I ask unanimous consent that my statement be included in the record at the beginning.

Chairman JOHNSON. It will be.

Senator MENENDEZ. Thank you.

Mr. Chairman, thank you for holding the hearing and I appreciate the testimony that I have read of the witnesses. I have a few questions and I am hoping that you can all help me here.

So let me start off with, I know some of you talk about single point of contact and dual track, but if you had to name a few specific national mortgaging service standards that you believe would be helpful, what would those be and how would they be helpful? This is for anyone on the panel.

Ms. SCHWARTZ. I am happy to offer a few. Clearly, the single point of contact has become a dominant discussion in the regulatory environment, the legislative environment, the advocacy environment, because customers are unhappy. And to turn that into something where they understand what is happening around them and to them and through the options that are made available, a single point of contact is something that makes them get through the process in an easier way. I testified earlier to say it does not mean the outcome will differ if they are not able to make an affordable payment or if they are unemployed and there are very tools that will help them get through a loan process. So single point of contact.

Dual track processing is the other very significant issue out there. It is confusing to homeowners to get help on the left side of the house to get a modification, of which I have spent 4 years working with the industry and nonprofits to do. At the same time, the laws create process and standards for foreclosure to occur, and so to explain that very complicated process has to be done in a much better way for the consumer.

Senator MENENDEZ. Now, Mr. Hopkins, in your testimony, you suggest that community banks should not be subject to national servicing standards, and I realize your arguments about consolidation in the industry are a concern. But to what extent does that depend on what servicing standards are we talking about?

Mr. HOPKINS. Well, we are already subject to some standards, and I think we have been able to follow those standards very carefully. You know, if we are dealing with Fannie Mae, Freddie Mac, or South Dakota Housing, in our case, they all have their standards of when they expect us to make contact with customers, *et cetera*. What we are concerned about is the cost that they are looking at to document that we are doing what we are doing, that we are having the contact with the customer. But I think, again, our results show that we are there. So what we are looking for is that anything you are doing does not add cost and burden to us and that we have a carve-out if we are meeting certain standards. I mean, our delinquency rate——

Senator MENENDEZ. So if your—go ahead. Finish that.

Mr. HOPKINS. I said, our delinquency rate would prove, at 1.7 percent, where we are one-third the national average, that we are doing the job that we are supposed to be doing. We have only had a handful of foreclosures over the last few years. And by handful, I am talking 23 last year. I mean, that is not—out of 5,000 loans, that is not an excessive number of foreclosures. Those are typically life-event type things, a divorce, loss of job, *et cetera,* that are causing those issues.

Senator MENENDEZ. All right. Let me ask for anyone, maybe some of the counsel here, does the panel acknowledge that it is a conflict of interest for mortgage servicers to have an ownership interest in a company that performs services associated with that owned mortgage services foreclosures—property maintenance, inspection, force placed insurance? Does that not give the servicers an incentive to force homeowners to use expensive add-on services for their own property, even when that is more likely to drive the homeowner into foreclosure?

Mr. SWIRE. Senator, that—OK.

Mr. COUCH. Senator, I think that certainly you raise a good point, that there are all sorts of interests in place that have to be balanced. I would maintain that there is not necessarily a conflict of interest for—in fact, it may make it easier for the consumer to have services that are provided in-house versus going outside the house.

Now, I think that most of the standards that are proposed would require those services to be offered at fair market rates and not be marked up, and we have had extensive debate throughout about RESPA and what is required under RESPA in that regard. So, I mean, you raise a very good point, but I think it is a case-by-case——

Senator MENENDEZ. How about force placed insurance?

Mr. COUCH. And——

Senator MENENDEZ. The effect on borrowers——

Mr. COUCH. Well, keep in mind what force placed insurance is designed to do. If you lend me money and I give you a security interest in my house to secure that money, part of the deal is that I keep insurance in place so that your security interest in my house is protected. And if I do not go out and get property and casualty insurance to keep your security interest secured, I think you as an investor would like there to be a provision, a contractual provision, that allows that coverage to be put in place so that your security interest is secured.

Senator MENENDEZ. But we have found many cases in which that force placed insurance has been well overpriced. And so, again, how do you maintain these bounds? The same issue, and I see, Professor, you are trying to get in here, so I will, after I ask this next question, have you maybe answer both of them.

The second thing was—and, Mr. Chairman, thank you for your patience—second lien conflict of interest at mortgage insurers. You know, so suppose it is a conflict of interest for the company servicing the primary lien to also own the second lien, and that industry alone is not willing to do anything to stop the conflict since it might be in the financial self-interest of at least some private sector parties for that conflict to continue. Is that not the kind of situation where there is a legitimate role for the Government to step in?

Mr. COUCH. Are you directing that to me, Senator?

Senator MENENDEZ. Yes.

Mr. COUCH. Well, again, keep in mind that in most of the cases that we are talking about, I mean, we can go back and talk about where the piggyback loan, which is where many times this has come about, is through the piggyback loans, why those evolved the way they did. But keep in mind that the relationship between the first and the second is established by State law. Well, it is established by, I think, investors that bought the first, or the lender that has the first and the lender who has the second, and any competing interests there are governed by State law and also by the contracts that govern the servicing——

Senator MENENDEZ. Oh, I understand the right, the privilege rights of whatever the first lender is and whatever the second lender is in terms of their status and how they will be compensated if there is foreclosure. My concern is the second, you know, the second lien being also the servicing entity, and in that context are they working in a way to satisfy their interests as a second lien holder or are they working in the interest of the homeowner and a resolution of the process in a way that best ensures that they can keep the person in their home.

Mr. COUCH. Well, the primary party affected by that is the owner of the first lien, and the first lien holder, if he has concern about the way the second lien is going to be serviced, would have to raise that concern at the point that he purchased the loan, because those are the rights that are most directly affected.

Now, I recognize that there have been suggestions that that second that the servicer of the second lien may put the interests of the second lien in front of the first, particularly if there is a loan modification that has been proposed, and I can easily envision the conflict that could arise. But the beef, if you will, is with the investor in that first mortgage.

Senator MENENDEZ. Professor, Swire, and then I will stop there.

Mr. SWIRE. Yes. Thank you, Senator. Just a couple of quick points. First is on force placed insurance, the logic of having the insurance to protect the investor is strong. What my experience found out was a national servicer had a practice of ignoring proof of insurance that came in from my State Farm agent or other agents like that and buying insurance anyway. So the fact that there is a reason for something does not mean it is being implemented correctly.

On the conflicts of interest, often, a first step is disclosure of the conflict so that people can see it, and I think with force placed insurance, with fees of various sorts, disclosures about that are one way to start to address the problem.

And the last point is on second liens, I know from my time in the Administration, there was very great concern that the decisions about seconds by major banks were driving how firsts got handled, and that a lot of times, seconds seemed to come first, that we had a lot of conflicts of interest. It made it much harder to make modifications that worked for the homeowners and for the first lien holders, and that was a big problem.

Senator MENENDEZ. Thank you. I appreciate it.

Thank you, Mr. Chairman.

Chairman JOHNSON. Senator Hagan.

Senator HAGAN. Thank you, Mr. Chairman, and I thank all of you for being here today and on Skype.

When I am in North Carolina, I travel across the State, and I hold "Conversations with Kay," and it is an opportunity for constituents throughout North Carolina to come to these events and actually bring their—we talk about the issues of the day, but also to bring their concerns to me, and we have constituent staffers there that can help immediately start working on issues. And without a doubt, there are always concerns about foreclosures, always concerns about mortgages that have questions. And in just about every situation, they discuss how documents have been requested, they send them in, they get lost; they send them in again, they get lost; they send them in again. It is a repetitive comment that I hear each and every time.

So my question is—and, Ms. Schwartz, I think you mentioned this in your opening talk about how a single point of contact might help solve problems like this, and any of you if would care to comment.

Ms. SCHWARTZ. Yes, Senator, good morning. You know, earlier, I also referenced, we created a Web portal called HOPE LoanPort for just that reason, so that consumers, counselors, and servicers would no longer have that anecdotal back-and-forth but a rigorous way to track documentation and process and time and date stamp every communication so that there no longer would be an issue, and that exists today through HOPE LoanPort, and we created a neutral nonprofit entity for just that reason.

Second, that is a fair concern. There is nothing more frustrating than losing documents and having 20 phone calls with someone who says—and then someone on the receiving end does not have it because of a fax or a FedEx.

So at the end of the day, this is not complex. There are ways to address it through documenting and making sure there is a safe and secure system of communicating among all the stakeholders so that does not happen anymore. It already exists today. We need to as an industry and Government keep working toward those solutions.

Senator HAGAN. Thank you.

Mr. SWIRE. Senator, from my experience this problem—first of all, the portal that Faith Schwartz just described is something that I have supported, and I think it is getting better. But what I saw in my own experience because I kept date and time stamps with a lot of documents was that at that point they would receive the documents, and then it did not fit their system, it did not have their loan number on it, and so they ignored the document even though they had my insurance agent's phone number and fax, my phone number and fax. They had a proof of insurance. They ignored it because it did not sort of check a box that they had in their system, and then they went ahead and bought the industry in a force placed way. And so that is in the file that I provided to staff, and it was a practice by one of the major servicers in this country in 2007.

Senator HAGAN. Thank you.

Some have suggested that one way to improve servicing is to create performance thresholds that servicers must meet at the MBS level, and if servicers failed to achieve delinquency rate targets, time lines, or modification success rates, the servicing rights would be sold and the servicer replaced.

Mr. Couch and Ms. Schwartz, can you discuss whether you believe such an approach would be effective? And then, Mr. Hopkins, could performance thresholds get servicers to perform better on behalf of investors and borrowers and at the same time avoid placing undue loan-by-loan regulatory burden on community banks that service loans?

Ms. SCHWARTZ. Sure. So there are already in a sense performance thresholds. Fannie Mae and Freddie Mac today have time lines required of foreclosure processes. They measure them against State law and other efforts, how long it takes to foreclose on a loan, and there are incentives in place for servicers to perform under their guidelines.

Certainly there are really great things being done by the small and special servicers out there, many who are members of HOPE NOW, who all they do is high-touch and feel and help the borrower who is in distress, and that is their main business. The larger shops have both performing and nonperforming aspects to their departments and have a lot of performing loans they deal with versus just a focused efforts.

Thresholds and ability to move servicing you investors is probably something to be considered because we have been locked up in the system with the inability to move loans in and out of pools and buckets, and it has caused some stress in the system.

Senator HAGAN. Mr. Couch.

Mr. COUCH. She did a good job.

Mr. HOPKINS. I guess from our standpoint, you know, particularly when we are talking about performance standards, we in the South Dakota housing market do have some penalties if we do not hit certain delinquency rates. Our fees are actually reduced as the delinquency rate goes up. So we are incented to have early and often contact with our customer, and it works.

You know, under some of the new proposals they are looking at, it is taking and cutting the servicing fees for your performing loans because they say you do not need to deal with them. Well, that will drive me out of the business because it is a break-even at best business as it is. And they are looking at, in my opinion, rewarding the bad players by paying them more to service and to modify those loans. Well, I think that is kind of a perverse relationship, and it will drive bad behavior. In my opinion, you should not be rewarded for making bad loans and paying people more to service bad loans. So we would be in favor of some servicing standards that would drive that.

Senator HAGAN. Thank you.

Thank you, Mr. Chairman.

Chairman JOHNSON. Mr. Hopkins and Ms. Schwartz, as we have heard from Professor Swire's testimony, resolving a servicer's mistakes takes time and diligence. To help correct mistakes sooner, can borrowers access their servicing records and mortgage files to ensure that payments and fees are being applied appropriately? Mr. Hopkins.

Mr. HOPKINS. Yes, if they call into our servicing department, we will happily supply them with their payment record and any other record that they would like on their mortgage. We will email it, fax it to them, whatever they would like, or if they come in and talk to us. If they find a discrepancy, we are happy to work with them to try to resolve the discrepancy because obviously we are what we call a high-touch, high-feel type bank, and we rely on our servicing and our expertise in servicing and our reputation as a high-touch supervisor.

Chairman JOHNSON. Ms. Schwartz.

Ms. SCHWARTZ. Yes, sir. Well, what I have seen from some of the largest shops is that they have very impressive Web-based access systems where they indeed can go in and look and have a read-only review in a private, secure setting to see where they are. And I think the industry has made great strides in that area.

I am not familiar enough to know across the industry the consistency of that opportunity.

Chairman JOHNSON. Professor Swire, what do you have to say to that?

Mr. SWIRE. Two observations. One is that Washington Mutual did, in fact, provide me detailed records eventually on that issue. They showed a lot of fees that I did not think I owed, but they showed them accurately.

A second thing is this issue of access to records was an issue in the Gramm-Leach-Bliley area, an area I used to work in, where there is no right of access in general like you have a right of access now to your medical records, and that is something that I think in practice usually the banks comply with, but there is not the same legal right that we have to our financial records that we have to our medical records.

Chairman JOHNSON. Yes. Thanks again to all our witnesses for being here with us today. As more developments within the servicing industry continue to surface, the Committee will continue to exercise oversight of this important issue.

The hearing record will remain open for 7 days for additional statements and questions.

This hearing is adjourned.

[Whereupon, at 11:06 a.m., the hearing was adjourned.]

[Prepared statements supplied for the record follow:]

PREPARED STATEMENT OF CHAIRMAN TIM JOHNSON

Good morning. I call this hearing to order.

Thanks to all of our witnesses for joining us this morning. I would also like to recognize that, for the first time, we have a witness joining us by Skype. Professor Peter Swire is in Oregon, but was kind enough to start his day early for our hearing.

Today, we will continue the Committee's oversight of problems in the mortgage servicing industry and explore the need for a national mortgage servicing standard.

The housing recovery appears to have stalled—in part because of widespread uncertainty in mortgage servicing. Borrowers aren't certain that servicers are accurately evaluating them for modifications. Servicers aren't confident that borrowers' documents were submitted properly. And investors are concerned about how all these factors increase litigation risk for servicers. Homes that should move through the foreclosure process are held up because courts and servicers are concerned that paperwork has not been completed properly.

We need rules of the road so that borrowers, investors and servicers have a clear understanding of the process to follow both when a borrower is current on payments and also in the unfortunate event that a borrower becomes delinquent.

Since our first servicing hearing in November of last year, the Federal banking regulators have found significant problems and issued consent orders to 14 large servicers; the Federal Housing Finance Agency amended its seller-servicer guidance to align Fannie Mae and Freddie Mac's standards for servicing and improve borrower contact; and the Treasury Department's HAMP program began issuing servicer report cards—which did not show promising improvements.

Even more recently, Reuters and AP released investigative reports detailing ongoing problems in mortgage servicing. I would like to place those reports into the record.

Given the variety of standards and the continuing problems that I've mentioned, it is important that we explore a national mortgage servicing standard.

Several Members of this Committee have already introduced legislation to create such a standard and mitigate the foreclosure crisis. Senator Reed is a consistent leader on this issue introducing legislation last Congress and again this Congress. I would also like to recognize Senator Merkley and Senator Brown for their legislative efforts.

Senator Menendez has also helped in the Committee's oversight of this issue with a productive hearing in the Housing Subcommittee.

This is an important issue, and the Committee will continue to exercise its oversight responsibility.

Before I turn to Senator Shelby, I would like to thank him and his staff for working with me and my staff on these housing finance reform hearings. Housing finance reform is a large topic that requires our attention in all aspects and these hearings will help us better understand the areas that need reform.

ADDENDUM I

AP Exclusive: Mortgage "Robo-Signing" Goes On

By Michelle Conlin and Pallavi Gogoi, AP Business Writers

Tuesday, July 19, 2011
(07-19) 06:05 PDT (AP)——

Mortgage industry employees are still signing documents they haven't read and using fake signatures more than 8 months after big banks and mortgage companies promised to stop the illegal practices that led to a nationwide halt of home foreclosures.

County officials in at least three States say they have received thousands of mortgage documents with questionable signatures since last fall, suggesting that the practices, known collectively as "robo-signing," remain widespread in the industry.

The documents have come from several companies that process mortgage paperwork, and have been filed on behalf of several major banks. One name, "Linda Green," was signed almost two dozen different ways.

Lenders say they are working with regulators to fix the problem but cannot explain why it has persisted.

Last fall, the Nation's largest banks and mortgage lenders, including JPMorgan Chase, Wells Fargo, Bank of America, and an arm of Goldman Sachs, suspended foreclosures while they investigated how corners were cut to keep pace with the crush of foreclosure paperwork.

Since then, suspect paperwork has been filed not only with foreclosures, but also with new purchases and refinancings. Critics say the new findings point to a systemic problem with the paperwork involved in home mortgages and titles. And they say it shows that banks and mortgage processors haven't acted aggressively enough to put an end to widespread document fraud in the mortgage industry.

"Robo-signing is not even close to over," says Curtis Hertel, the recorder of deeds in Ingham County, Mich., which includes Lansing. "It's still an epidemic."

In Essex County, Mass., the office that handles property deeds has received almost 1,300 documents since October with the signature of "Linda Green," but in 22 different handwriting styles and with many different titles.

Linda Green worked for a company called DocX that processed mortgage paperwork and was shut down in the spring of 2010. County officials say they believe Green hasn't worked in the industry since. Why her signature remains in use is not clear.

"My office is a crime scene," says John O'Brien, the registrar of deeds in Essex County, which is north of Boston and includes the city of Salem.

In Guilford County, NC, the office that records deeds says it received 456 documents with suspect signatures from Oct. 1, 2010, through June 30. The documents, mortgage assignments and certificates of satisfaction, transfer loans from one bank to another or certify a loan has been paid off.

Suspect signatures on the paperwork include 290 signed by Bryan Bly and 155 by Crystal Moore. In the mortgage investigations last fall, both admitted signing their names to mortgage documents without having read them. Neither was charged with a crime.

And in Michigan, a fraud investigator who works on behalf of homeowners says he has uncovered documents filed this year bearing the purported signature of Marshall Isaacs, an attorney with foreclosure law firm Orlans Associates. Isaacs' name did not come up in last year's investigations, but county officials across Michigan believe his name is being robo-signed.

O'Brien caused a stir in June at a national convention of county clerks by presenting his findings and encouraging his counterparts to investigate continued robo-signing.

The Nation's foreclosure machine almost came to a standstill when the Nation's largest banks suspended foreclosures last fall. Part of the problem, banks contended, was that foreclosures became so rampant in 2009 and 2010 that they were overwhelmed with paperwork.

The banks reviewed thousands of foreclosure filings, and where they found problems, they submitted new paperwork to courts handling the cases, with signatures they said were valid. The banks slowly started to resume foreclosures this winter and spring.

The 14 biggest U.S. banks reached a settlement with Federal regulators in April in which they promised to clean up their mistakes and pay restitution to homeowners who had been wrongly foreclosed upon. The full amount of the settlement has not been determined. But it will not involve independent mortgage processing firms, the companies that some banks use to handle and file paperwork for mortgages.

So far, no individuals, lenders or paperwork processors have been charged with a crime over the robo-signed signatures found on documents last year. Critics such as April Charney, a Florida homeowner and defense lawyer, called the settlement a farce because no real punishment was meted out, making it easy for lenders and mortgage processors to continue the practice of robo-signing.

Robo-signing refers to a variety of practices. It can mean a qualified executive in the mortgage industry signs a mortgage affidavit document without verifying the information. It can mean someone forges an executive's signature, or a lower-level employee signs his or her own name with a fake title. It can mean failing to comply with notary procedures. In all of these cases, robo-signing involves people signing documents and swearing to their accuracy without verifying any of the information.

Most of the tainted mortgage documents in question last fall were related to homes in foreclosure. But much of the suspect paperwork that has been filed since then is for refinancing or for new purchases by people who are in good standing in the eyes of the bank. In addition, foreclosures are down 30 percent this year from last. Home sales have also fallen. So the new suspect documents come at a time when much less paperwork is streaming through the Nation's mortgage machinery.

None of the almost 1,300 suspect Linda Green-signed documents from O'Brien's office, for example, involve foreclosures. And Jeff Thigpen, the register of deeds in North Carolina's Guilford County, says fewer than 40 of the 456 suspect documents filed to his office since October involved foreclosures.

Banks and their partner firms file mortgage documents with county deeds offices to prove that there are no liens on a property, that the bank owns a mortgage or that a bank filing for foreclosure has the authority to do so.

The signature of a qualified bank or mortgage official on these legal documents is supposed to guarantee that this information is accurate. The paper trail ensures a legal chain of title on a property and has been the backbone of U.S. property ownership for more than 300 years.

The county officials say the problem could be even worse than what they're reporting. That's because they are working off lists of known robo-signed names, such as Linda Green and Crystal Moore, that were identified during the investigation that began last fall. Officials suspect that other names on documents they have received since then are also robo-signed.

It is a Federal crime to sign someone else's name to a legal document. It is also illegal to sign your name to an affidavit if you have not verified the information you're swearing to. Both are punishable by prison.

In Michigan, the attorney general took the rare step in June of filing criminal subpoenas to out-of-State mortgage processing companies after 23 county registers of deeds filed a criminal complaint with his office over robo-signed documents they say they have received. New York Attorney General Eric Schneiderman's office has said it is conducting a banking probe that could lead to criminal charges against financial executives. The attorneys general of Delaware, California, and Illinois are conducting their own probes.

The legal issues are grave, deeds officials across the country say. At worst, legal experts say, the document debacle has opened the property system to legal liability well beyond the Nation's foreclosure crisis. So someone buying a home and trying to obtain title insurance might be delayed or denied if robo-signed documents turn up in the property's history. That's because forged signatures call into question who owns mortgages and the properties they are attached to.

"The banks have completely screwed up property records," says L. Randall Wray, an economics professor and senior scholar at the University of Missouri-Kansas City.

In the Massachusetts case, The Associated Press tried to reach Linda Green, whose name was purportedly signed 1,300 times since October. The AP, using a phone number provided by lawyers who have been investigating the documents since last year, reached a person who said she was Linda Green, but not the Linda Green involved in the mortgage investigation.

In the Michigan case, a lawyer for the Orlans Associates law firm, where Isaacs works, denies that Isaacs or the firm has done anything wrong. "People have signatures that change," says Terry Cramer, general counsel for the firm. "We do not engage in 'robo-signing' at Orlans."

To combat the stream of suspect filings, O'Brien and Jeff Thigpen, the register of deeds in North Carolina's Guilford County, stopped accepting questionable paperwork June 7. They say they had no choice after complaining to Federal and State authorities for months without getting anywhere.

Since then, O'Brien has received nine documents from Bank of America purportedly signed by Linda Burton, another name on authorities' list of known robo-signers. For years, his office has regularly received documents signed with Burton's name but written in such vastly different handwriting that two forensic investigators say it's highly unlikely it all came from the same person.

O'Brien returned the nine Burton documents to Bank of America in mid-June. He told the bank he would not file them unless the bank signed an affidavit certifying the signature and accepting responsibility if the title was called into question down the road. Instead, Bank of America sent new documents with new signatures and new notaries.

A Bank of America spokesman says Burton is an assistant vice president with a subsidiary, ReconTrust. That company handles mortgage paperwork processing for Bank of America.

"She signed the documents on behalf of the bank," spokesman Richard Simon says. The bank says providing the affidavit O'Brien asked for would have been costly and time-consuming. Instead, Simon says Bank of America sent a new set of documents "signed by an authorized associate who Mr. O'Brien wasn't challenging."

The bank didn't respond to questions about why Burton's name has been signed in different ways or why her signature appeared on documents that investigators in at least two States have deemed invalid.

Several attempts by the AP to reach Burton at ReconTrust were unsuccessful.

O'Brien says the bank's actions show "consciousness of guilt." Earlier this year, he hired Marie McDonnell, a mortgage fraud investigator and forensic document analyst, to verify his suspicions about Burton's and other names on suspect paperwork.

She compared valid copies of Burton's signature with the documents O'Brien had received in 2008, 2009, and 2010 and found that Burton's name was fraudulently signed on hundreds of documents.

Most of the documents reviewed by McDonnell were mortgage discharges, which are issued when a home changes hands or is refinanced by a new lender and are supposed to confirm that the previous mortgage has been paid off. Bank of America declined comment on McDonnell's findings.

In Michigan, recorder of deeds Hertel and his counterparts in 23 other counties found numerous suspect signatures on documents filed since the beginning of the year.

In June, their findings led the Michigan attorney general to issue criminal subpoenas to several firms that process mortgages for banks, including Lender Processing Services, the parent company of DocX, where Linda Green worked. On July 6, the CEO of that company, which is also under investigation by the Florida Attorney General's office, resigned, citing health reasons.

http://sfgate.com/cgi-bin/article.cgi?f=/n/a/2011/07/18/national/a135435D60.DTL

ADDENDUM II

SPECIAL REPORT

Margery Gunter at her home in Immokalee, Florida, May 6, 2011. REUTERS/JOE SKIPPER

MORTGAGE MESS REDUX: ROBO-SIGNERS RETURN

A Reuters investigation finds that many banks are still employing the controversial foreclosure practices that sparked a major outcry last year.

BY SCOTT PALTROW
NEW YORK/IMMOKALEE, FLORIDA, JULY 19

AMERICA'S LEADING MORTGAGE lenders vowed in March to end the dubious foreclosure practices that caused a bruising scandal last year.

But a Reuters investigation finds that many are still taking the same shortcuts they promised to shun, from sketchy paperwork to the use of "robo-signers."

In its effort to seize the two-bedroom ranch house of 87-year-old Margery Gunter in this down-on-its-luck Florida town, OneWest Bank recently filed a court document that appears riddled with discrepancies. Mrs. Gunter, who has lived in the house for 40 years and gets around with the aid of a walker, stopped paying her loan back in 2009, her lawyer concedes. To foreclose, the bank submitted to the Collier County clerk's office on March 3 a "mortgage assignment," a document essential to proving who owns a mortgage once the original lender sells it off.

But OneWest's paperwork is problematic. Among the snags: state law permits lenders to file to foreclose only if they already legally own a mortgage. Yet the key document

REUTERS

PAPERWORK: Margery Gunter, (2nd-L) who is almost completely deaf, reads a question from her Legal Aid attorneys Eduardo Espinoza (L), Albert Batista (2nd-R) and Joe Klein (R) in her home in Immokalee, Florida May 6, 2011. **REUTERS/JOE SKIPPER**

establishing ownership wasn't signed and officially recorded until months after OneWest filed to foreclose on Mrs. Gunter. OneWest declined to comment on the case.

Reuters has found that some of the biggest U.S. banks and other "loan servicers" continue to file questionable foreclosure documents with courts and county clerks. They are using tactics that late last year triggered an outcry, multiple investigations and temporary moratoriums on foreclosures.

In recent months, servicers have filed thousands of documents that appear to have been fabricated or improperly altered, or have sworn to false facts.

Reuters also identified at least six "robo-signers," individuals who in recent months have each signed thousands of mortgage assignments -- legal documents which pinpoint ownership of a property. These same individuals have been identified -- in depositions, court testimony or court rulings -- as previously having signed vast numbers of foreclosure documents that they never read or checked.

Among them: Christina Carter, an employee of Ocwen Loan Servicing of West Palm Beach, Florida, a "sub-servicer" which handles routine mortgage tasks for banks. Her signature -- just two "C"s -- has appeared on thousands of mortgage assignments and other documents this year.

> "FAMILIES SHOULD BE USING EVERY OPPORTUNITY THEY CAN TO PROTECT THEIR RIGHTS."

In a case involving a foreclosure by HSBC Bank USA, a New York state court judge this month called Carter a "known robo-signer" and said he'd found multiple variations of her two-letter signature on documents, raising questions about whether others were using her name. That and other red flags prompted the judge to take the extraordinary step of threatening to sanction HSBC's chief executive officer.

In a phone interview, Carter acknowledged signing large numbers of mortgage assignments this year, but said they all were legally done. To her knowledge, she added, no one else used her name.

'CUTTING CORNERS'

ONE OF THE INDUSTRY'S top representatives admits that the federal settlements haven't put a stop to questionable practices.

Some loan servicers "continue to cut corners," said David Stevens, president of the Mortgage Bankers Association. Nearly all borrowers facing foreclosure are delinquent, he said, but "the real question is whether the servicer complied with all legal requirements." The loss of a home is "the most critical time in a family's life," and if foreclosure paperwork is faulty homeowners should contest it. "Families should be using every opportunity they can to protect their rights."

Federal bank regulators signed settlements in March with 14 loan servicers -- banks and other companies that perform tasks for mortgage investors such as collecting payments from homeowners and when necessary, filing to foreclose. The 14 firms promised further internal investigations, remediation for some who were harmed and a halt to the filing of false documents. All such behavior had stopped by the end of 2010, they said.

Of these companies, Reuters has found at least five that in recent months have filed foreclosure documents of questionable validity: OneWest, Bank of America, HSBC Bank USA, Wells Fargo and GMAC Mortgage.

So have half a dozen large servicers that weren't party to the agreements, including Ocwen Financial Corp and units of Credit Suisse Group AG.

Spokesmen for the banks and servicers named in this article said that they halted any wrongdoing after disclosures last autumn of robo-signing led them to revise their practices, and they denied filing false documents since then.

In general, they said their foreclosure cases were legitimate, but for a small number of exceptions, and that criticism by defense lawyers and judges of some types of documentation is based on misinterpretation of the law.

The persistence of the paperwork mess poses a dilemma for American policymakers and society at large.

The vast majority of homeowners in foreclosure are in fact delinquent on their mortgage payments. Many bankers and judges view the issue as a technicality. Regardless of legal niceties, they say, people should pay up or lose the collateral on the loans -- their houses and condos.

Increasingly, though, courts are holding that the trusts suing to foreclose don't actually own the mortgages. Judges have ruled that foreclosing based on flawed or missing evidence violates longstanding laws meant to protect all Americans' property rights.

In a landmark decision in January, the Massachusetts Supreme Judicial Court overturned a foreclosure because of a lack of proper documentation.

"The holder of an assigned mortgage needs to take care to ensure that his legal paperwork is in order," wrote Justice Robert Cordry in a concurring opinion. "Although there was no apparent actual unfairness here to the (homeowners), that is not the point. Foreclosure is a powerful act with significant consequences, and Massachusetts law has always required that it proceed strictly in accord with the statutes that govern it."

(U.S. Bank National Association, trustee, vs. Antonio Ibanez, 458 Mass. 637.)

A THOUSAND QUESTIONS

REUTERS REVIEWED RECORDS of individual county clerk offices in five states -- Florida, Massachusetts, New York, and North and South Carolina -- with searchable online databases. Reuters also examined hundreds of documents from court case files, some obtained online and others provided by attorneys.

The searches found more than 1,000 mortgage assignments that for multiple reasons appear questionable: promissory notes missing required endorsements or

PAPERWORK PICKLE: ARCHIVE IS AT CENTER OF MORTGAGE MESS

BY SCOT PALTROW
NEW YORK, JULY 19

A LITTLE-KNOWN INSTITUTION in Reston, Virginia, has done much to help loan servicers produce foreclosure documents of questionable legitimacy, according to multiple recent court rulings and deposition testimony.

Mortgage Electronic Registration Systems, or MERS, has only about 50 full time employees. Yet it claims to own about half of all mortgages in the United States, roughly 60 million loans, and is involved in about 60 percent of new mortgages issued.

Fannie Mae, Freddie Mac and several large banks established MERS in 1995, as a registry meant to speed up the recording and transfer of mortgages. Until then, this had to be done in individual county clerks offices and the process was glacial. The founders went ahead even though no state laws authorized them to bypass the required filing with clerks.

The purpose of MERS was simple: To make it possible to track the owner and servicer of each individual mortgage, and to make it easier to rapidly transfer mortgages. Lenders designated MERS as either the mortgagee (the legal holder of a mortgage, even though MERS had never paid a penny to obtain it), or as "assignee" (an entity to which a mortgage is entrusted). In either case, MERS was granted power to assign mortgages as they changed hands from one real owner (such as a bank) to another (such as a mortgage security trust) – even though MERS itself didn't have a financial interest in any of the mortgages. MERS also claims the right to transfer promissory notes, even though it doesn't own them.

In deposition testimony beginning in 2009, it emerged that MERS's own employees did little but maintain the computer database. The real work was done by loan servicers -- banks and other companies that do routine work for trusts that own the mortgages, including collecting and tracking payments from homeowners and filing to foreclose when a borrower defaults. For a $25 fee, employees of any of the 3,000 loan servicers that belonged to MERS could get themselves designated as a MERS "vice president" or "assistant secretary," authorized to sign official documents on behalf of MERS.

This April, upon announcing settlements with 14 lenders over allegedly improper foreclosure practices, federal bank regulators required MERS too to sign an agreement to reform. The regulators said MERS had failed to establish adequate internal controls, and "engaged in unsafe or unsound practices" in transferring mortgages. Like the 14 lenders, MERS neither admitted nor denied wrongdoing.

In practice, when servicers needed to create mortgage assignments to replace missing ones for foreclosure cases, their own employees, signing as MERS officials, printed out newly minted documents and signed their names to them. MERS has served in effect as an instant teller machine for mortgage assignments. Servicers simply have their own employees sign the needed documents as MERS officials.

For some time, most courts around the country rejected homeowners' challenges to MERS and upheld the mortgage assignments. But recent decisions by state and federal appellate courts have been ruling that MERS doesn't have the right to transfer promissory notes and mortgages. A New York State appellate court in June ruled that MERS, because it does not own the notes, has no power to transfer to servicers the right to foreclose. Federal district and bankruptcy courts in multiple states recently have issued similar rulings. (Bank of New York v Silverberg, 2011 Slip Op 05002, New York State Appellate Division, Second Department.)

A spokeswoman noted that judges in multiple states continue to uphold MERS powers. In response to pressure from regulators and the courts, MERS had said it is redrafting some of its procedures.

(Editing by Michael Williams)

bearing faulty ones; and "complaints" (the legal documents that launch foreclosure suits) that appear to contain multiple incorrect facts.

These are practices that the 14 banks and other loan servicers said had occurred only on a small scale and were halted more than six months ago.

The settlements included the four largest banks in the United States -- Bank of America Corp, Wells Fargo, JP Morgan Chase & Co, and Citigroup Inc. The other parties were lending units of Ally Financial Inc, HSBC Holdings PLC, MetLife Inc, PNC Financial Services Group Inc, SunTrust Banks Inc, U.S. Bancorp, Aurora Bank, EverBank, OneWest Bank and Sovereign Bank.

The pacts were struck with the Office of the Comptroller of the Currency, the main regulator of national banks, as well as with the Federal Reserve, the Federal Deposit Insurance Corp. and the Office of Thrift Supervision.

Some state and federal officials have called the settlements weak. Authorities are still working out financial penalties to be imposed on the 14 firms. The banks didn't admit or deny wrongdoing, and many of the practices banned were previously illegal anyway, such as filing false affidavits and making false notarizations. And regulators left it to the banks to oversee their own internal investigations.

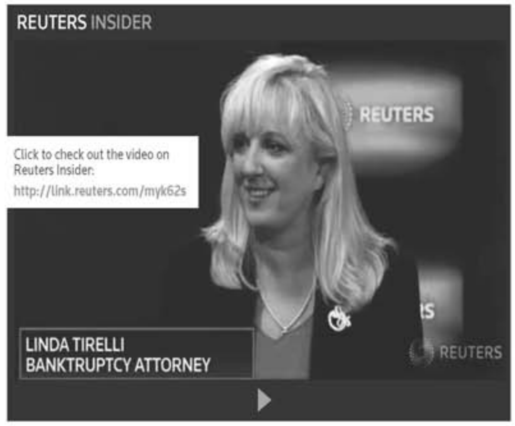
The OCC confirmed it has received complaints that questionable practices continue. But spokesman Bryan Hubbard said the settlements "are intended to address many of the root causes of improper foreclosure actions," thus preventing future harm.

WAVE OF FORECLOSURES

THE COLLAPSE OF THE housing boom in late 2006 led to a wave of foreclosures. Federal Reserve data show that some 4.5 percent of U.S. mortgages are in foreclosure. In 2010, 2.5 million foreclosures were initiated, with a similar number expected this year.

In the housing boom, lenders created millions of new mortgages, packaged them into pools, and securitized them rapidly for sale to investors in so-called mortgage-securities trusts.

The agreements setting up the trusts, called "pooling and servicing agreements," require that key documents, properly executed and endorsed, be turned over immediately for each mortgage when a trust is established. The two most important ones are a promissory note and mortgage assignment.



BLOG
Find more Reuters special reports at our blog The Deep End here:
http://link.reuters.com/heq72q

A mortgage really has two parts. One is the actual mortgage (in some states called a "deed of trust"). Its purpose is to pledge the home as collateral for the loan. To transfer ownership of this collateral pledge, the seller must issue a document called a mortgage assignment. The other is the promissory note, which is the loan agreement itself. The homeowner signs it, promising to pay principal and interest.

The Reuters examination turned up thousands of instances --more than 2,000 in Florida alone -- involving recently filed mortgage assignments which ostensibly transferred mortgages to these trusts years after they were formed.

The problem, according to Georgetown University law professor Adam Levitin, an expert on securitization: About 80 percent of all trust agreements provide that New York State law applies, and under New York law, any mortgage assignments made later than specified in the agreements would be void.

Reuters has also uncovered problems with the other key document used in foreclosure cases, the promissory note.

To foreclose, a trust, bank or mortgage finance giant such as Fannie Mae or Freddie Mac must possess the original "blue ink" signed promissory note. The crucial parts of the note are at the bottom -- the endorsements, somewhat like those on the back of a check. The agreements establishing trusts require a proper chain of endorsements showing legal transfers of a note from the original lender, through any intermediary owners, and finally to the trust itself.

Attorneys defending homeowners contend that improper endorsements are rife. Reuters obtained from public court records and defense attorneys more than 100 examples of notes that for various reasons appear to be improper.

MYSTERY OF MARY ARTHUR

ONE EXAMPLE: The attempt by Credit Suisse unit DLJ Mortgage Capital to foreclose on Mary Arthur of Dobbs Ferry, New York. Mrs. Arthur, 63 and legally blind, works part time as an assistant in a doctor's office. Originally from Trinidad, Mrs. Arthur became delinquent on her $427,500 loan after her parents and sister died and she ran up debts travelling home for the funerals, according to her attorney, Linda Tirelli.

The loan servicers, Select Portfolio Servicing of Salt Lake City, threatened to foreclose on DLJ's behalf. Mrs. Arthur arranged with Select Portfolio a trial mortgage modification to see if she could keep up with the reduced payments. She made the payments but, Tirelli said, Select Portfolio filed to foreclose.

DLJ filed in two separate court cases what it said were authentic copies of Mrs. Arthur's promissory note. Because they were supposed to be copies of the same document, the endorsements filed with both courts should be identical.

But a look at the documents shows that the version filed in state court and the one filed in bankruptcy court had completely different endorsements on them -- naming different owner banks and signed by different people. Tirelli said she has brought this to the attention of the bankruptcy judge and is awaiting a ruling.

Credit Suisse, which owns both DLJ Mortgage Capital and Select Portfolio Servicing, declined to comment, as did Casey Howard, the lawyer representing DLJ in the bankruptcy case.

Bank of America, meanwhile, is coming under fire from a New York federal bankruptcy judge.

Last Tuesday, Judge Robert Drain ordered an investigation involving a foreclosure case brought by the bank. Two earlier copies of a promissory note filed in court had lacked any endorsement, but then one appeared on the note when bank lawyers produced the original.

The judge said the sudden appearance of an endorsement, and his own close look at it, raised questions about whether it had been added illegally to make the note look legitimate.

It "raises a sufficiently serious issue as to when and more importantly by whom this note was endorsed," the judge said.

A Bank of America spokesman said the bank will produce evidence that "will demonstrate to the court's satisfaction that the endorsement is proper."

(In re: Priscilla C. Taylor, Debtor, United States Bankruptcy Court, Southern District of New York, Case # 10-22652.)

HOLDING ON: Above and below, Mary and Steve Arthur stand in front of their home in Dobbs Ferry, New York, July 14, 2011
REUTERS/MIKE SEGAR

MISSING SIGNATURES

THESE BANKS AREN'T alone in filing doubtful documents. Reuters found cases in which Wells Fargo didn't obtain mortgage assignments -- and hence the right to foreclose -- until well after it had filed foreclosure cases.

Wells Fargo, as a trustee, has moved to foreclose on homeowners who have mortgages from now-defunct Option One Mortgage Corp. In June, a bankruptcy appellate panel of the federal Ninth Circuit Court of Appeals overturned a decision to allow Wells Fargo to foreclose on an Option One mortgage. It said that there was no evidence that the note and mortgage had ever been turned over to Wells Fargo as trustee.

In court files of Florida foreclosure cases by Wells Fargo on Option One mortgages, none of the promissory notes filed as exhibits in 10 cases found by Reuters had any endorsements on them.

A Wells Fargo spokeswoman said it is possible that proper endorsements exist but were omitted from the copies of the promissory notes filed in court.

In other cases reviewed by Reuters, Wells Fargo and GMAC Mortgage, a unit of Ally Financial, this year assigned mortgages from defunct lender New Century Mortgage Corp., which went under in 2007. Securitization lawyers say it is technically impossible for a defunct company to directly assign a mortgage over to another owner.

Documents and statements made to courts that are found to be false can amount to crimes under state and federal laws. Daniel Richman, a Columbia University law professor and former federal prosecutor, said such acts can be perjury, and preparing fraudulent documents can be prosecuted under federal mail and wire fraud statutes. The Sarbanes-Oxley Act makes it a crime punishable by up to 20 years in jail to file false documents in a bankruptcy case, including foreclosures.

ROBO-SIGNERS RETURN

REUTERS ALSO FOUND that loan servicers are still using the corner-cutting tactic that most captured the public imagination last year: robo-signing.

The investigation identified six known robo-signers who have continued to churn out large numbers of mortgage assignments since the beginning of 2011 — months after the industry vowed to stop the practice.

Among them is Bryan Bly, an employee of Nationwide Title Clearing of Palm Harbor, Florida.

Bly testified in a July 2010 foreclosure case in Florida that he signed up to 5,000 mortgage assignments per day at the loan-servicing company. Although he is an employee of Nationwide, he signed the documents as a "vice president" of Option One Mortgage, Deutsche Bank, CitiBank and other institutions. (Case # 2009-CA-1920, Circuit Court of the Fourth Judicial District, Clay County, FL)

In his deposition, Bly said Nationwide multiplied his output by electronically stamping his signature on additional mortgage assignments that Bly said he never saw. He testified, too, that all the documents then were falsely notarized. Nationwide's notaries were given stacks of the already-signed documents, he said, and attested falsely that Bly had signed the legal papers in front of them. Bly said he didn't verify the information in the papers he signed, and that he didn't understand key words and expressions in them.

Despite these disclosures, a Reuters search of county clerk records in Florida, New York and Massachusetts shows that Bly continued to sign thousands of mortgage assignments this year.

A Nationwide spokeswoman said there is nothing illegal about signing large numbers of mortgage assignments. After Reuters inquired about Bly, however, she later said that because of recent questions raised about him by Nationwide customers, Bly has been moved to a job at the firm that doesn't involve signing documents.

R. Christopher Rodems, a lawyer for Bly, said there is nothing improper about signing large numbers of mortgage assignments. Rodems said Bly had received death threats after a videotaped deposition Bly gave in November 2010 was posted briefly on YouTube, in which he testified about signing massive numbers of mortgage assignments.

NOT HOME: An empty mail box is seen at the front door of a foreclosed house in Miami Gardens, Florida September 15, 2009. **REUTERS/CARLOS BARRIA**

A LAWYER'S NAME

ROBO-SIGNING ISN'T limited to low-level employees at loan servicers.

Lawrence Buckley is a lawyer who manages the Dallas, Texas law firm Brice, Vander Linden and Wernick. In March, he testified that he had allowed his electronic signature to be affixed to sworn court documents that he had never seen. The documents, known as "proofs of claim," included one filed with the federal bankruptcy court in New York. It sought permission for Deutsche Bank to seize the Bronx, New York, house of 59-year-old Virginia Obasi. (United States Bankruptcy Court, Southern District of New York, Case # 10-10494 MG)

Buckley said he had never seen the document, and that another lawyer at his firm had filed it using Buckley's electronic signature. The signature appears on the document as "/s/ Lawrence J. Buckley."

Buckley said that other lawyers at his firm were permitted to use his signature to file documents electronically with bankruptcy courts. He testified that it was standard practice at the firm not to review any of the original documents the claim was supposed to be based on, such as the original promissory note and mortgage.

Luke Madole, a lawyer for Buckley, said he saw nothing wrong with Buckley letting lawyers he directly managed use his electronic signature. Later, in an e-mailed statement, Madole added that what occurred "is nothing like 'robo-signing'" and to use "that loaded term would be unfair in the extreme."

A JUDGE INVESTIGATES

ROBO-SIGNER CHRISTINA Carter resurfaced in a ruling earlier this month, when Arthur Schack, a New York State court judge in Brooklyn, threw out an attempt by HSBC to foreclose on a Brooklyn house.

Schack said he had instructed HSBC's chief

"ONEWEST IS DEDICATED TO ENSURING THAT IT MEETS THE NEEDS OF ITS CUSTOMERS, ACTS IN ACCORDANCE WITH APPLICABLE LAWS, AND COMPLIES WITH ITS CONTRACTUAL MORTGAGE SERVICING DUTIES TO THE HIGHEST STANDARDS."

lawyer in the case, Frank Cassara, to confirm key facts directly with HSBC officials. The judge said Cassara subsequently "affirmed 'under the penalties of perjury'" that he had done so. But the judge said it turned out that Cassara had never checked with anyone at HSBC, and that the employees Cassara had said he spoke with at HSBC actually worked for a loan servicer.

The judge also said signatures on documents in the case were filed by known robo-signers, three of whom he identified by name, including Carter of Ocwen Loan Servicing. He personally had examined multiple examples of their signatures, the judge said, and found wide variations, raising the possibility that other people had been signing their names.

Judge Schack then took an unusual step: He formally threatened HSBC's CEO, Irene Dorner, as well as lawyers for the firm, with sanctions for relying on known robo-signers, filing false documents and making false representations to the court. The possible sanctions could range from an oral reprimand to financial and other penalties. He has summoned them to appear at a hearing.

"If HSBC has a duty to make money for its stockholders," Schack wrote, "why is it purchasing nonperforming loans, and wasting the Court's time with defective paperwork and the use of robo-signers?"

HSBC spokesman Neil Brazil said that the servicer, Ocwen, was responsible for what occurred in the case, and that HSBC had had no role in it.

Paul Koches, Ocwen's general counsel, said in an e-mail: "To our knowledge, there was nothing submitted by our legal counsel to the court that was in any way misleading as to who is the owner of this mortgage and note, nor was there any conduct of any kind that would justify sanctions."

Carter says she did nothing improper, and left Ocwen voluntarily in May for another job.

DOWN IN FLORIDA

THE BANK NOW TRYING to foreclose on Marjorie Gunter has produced a troubled paper trail. OneWest submitted a document signed this February to prove that the original lender for her mortgage, a company called MortgageIT, had signed

'TAKE ME TOO': Margery Gunter, who turned 87 in May, is delinquent by more than $160,000 on her mortgage.
REUTERS/JOE SKIPPER

over ownership to OneWest. But MortgageIT, owned by Deutsche Bank, wasn't in business in February. It had ceased operations three years earlier, in 2008.

A Deutsche Bank spokesman declined to comment.

Even if the February document were authentic, it wasn't recorded until nearly 10 months after OneWest had launched its foreclosure action, which began in May 2010. Real estate law throughout the United States requires that before moving to foreclose, a trust or bank must already own the mortgage and related promissory note. Otherwise, courts have ruled, a forecloser has no right to seize a house.

OneWest also filed two separate copies of what it said was the 87-year-old homeowner's original promissory note. The first had an endorsement only from MortgageIT to now-defunct IndyMac Bank. Weeks later, OneWest filed a second copy of the note, with the addition of a "blank" endorsement -- an endorsement by IndyMac, but with the name of the payee left empty. OneWest has filed no evidence in the case that the note was subsequently transferred to Fannie Mae.

OneWest declined to explain the multiple apparent discrepancies in the Gunter foreclosure documents. A spokesman said in an e-mail: "OneWest is dedicated to ensuring that it meets the needs of its customers, acts in accordance with applicable laws, and complies with its contractual mortgage servicing duties to the highest standards."

A Fannie Mae spokeswoman said Fannie does own the Gunter note, but declined to explain how the mortgage finance giant obtained it, "due to it being in active litigation."

The judge in the Gunter case hasn't ruled yet on OneWest's documents. (20th Judicial Circuit Court in Collier County, FL, Case number 10-2982-CA).

Mrs. Gunter lives in Immokalee, a scrubby town 34 miles inland from Fort Myers on Florida's Gulf coast. About 40 per cent of the townspeople live below the poverty line, census data show. She shares her home with her three dogs; her one surviving son lives in a nursing home.

In an interview at her house, on a dusty road off the main highway, Mrs. Gunter said she doesn't understand why the bank is foreclosing.

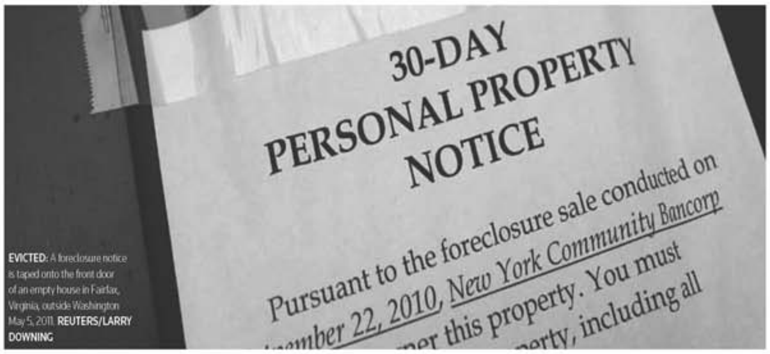
OneWest says that Mrs. Gunter now is delinquent by more than $160,000. Her lawyer, Joseph Klein of the Legal Aid Service of Collier County, argues there are extenuating circumstances.

Copies of her mortgage application forms show that in December 2006, an agent for Deutsche Bank's MortgageIT unit signed up Mrs. Gunter for a $149,900 mortgage. The forms, listing her income, show that the agent knew that the monthly payments -- $1,151, including insurance -- were more than her monthly income of $800 from Social Security plus about $200 in food stamps.

In an affidavit filed in court, Mrs. Gunter said she had asked the salesman for a "reverse mortgage," which allows senior citizens to remain in their homes without making mortgage payments, with the value of the house going to the bank when they die. But the documents the salesman gave her to sign were for an ordinary 30-year mortgage.

Losing her place would be a devastating blow, Mrs. Gunter said. "If they take the house," she said, "they'll take me, too."

(Scot Paltrow reported from New York and Washington, Tom Brown from Immokalee; editing by Michael Williams and Claudia Parsons)



EVICTED: A foreclosure notice is taped onto the front door of an empty house in Fairfax, Virginia, outside Washington May 5, 2011. **REUTERS/LARRY DOWNING**

BEHIND THE CORNER-CUTTING, VAST TROVES OF MISSING DOCUMENTS

BY SCOT PALTROW
NEW YORK, JULY 18

WHY HAVE SKETCHY MORTGAGE procedures been so difficult to root out? Some lawyers blame misguided efforts to cut costs. Most foreclosures are uncontested, they note. And so servicers save money by avoiding costly searches for missing original documents or hiring additional staff to deal with the surge in foreclosures.

There are signs, however, that servicers resort to doubtful documents because they have no choice if they are determined to foreclose: To a great extent, originals simply don't exist.

It's one of the overlooked legacies of the housing boom.

In the rush to make new home loans and sell them off as fast as possible to investors on Wall Street, the original lenders --big banks as well as now defunct makers of subprime loans -- destroyed original documents, or never turned them over as required to the ownership pools that scooped them up. From 2004 through the end of the housing boom in 2006, more than half of all new mortgages were securitized and sold to such pools, known as mortgage-securitization trusts, according to the Securities Industry and Financial Markets Association.

So, banks and intermediaries in many cases never turned over the two essential documents underpinning a home loan -- promissory notes and mortgages -- that would convey ownership to the investor trusts. That means many pension funds, insurance companies and hedge funds that invested in the trusts never got formal title to mortgages they had paid for.

Sheila Bair, who recently stepped down as Federal Deposit Insurance Corp. chairman, in Congressional testimony has called for a wide-ranging audit of the problem. But other regulators so far haven't backed the idea, possibly fearing that if the extent of the problem became known the housing market might worsen.

One example: Public records in foreclosure cases indicate that New Century Mortgage, the nation's second-largest subprime lender until it collapsed in 2007, almost never endorsed promissory notes or assigned mortgages to trusts that bought its mortgages.

A Reuters sampling of 50 foreclosure cases filed in Duval County, Florida, involving New Century mortgages found that none of the promissory notes filed in the cases had any endorsements at all on them. Records show that similar large-scale lapses occurred with other big lenders.

The result is that trusts may be out many billions of dollars, says Matthew Weidner, a lawyer who specializes in mortgage litigation. If proper procedures are followed now, foreclosures could slow to a trickle. And a cloud would hang over title to millions of homes, potentially further depressing the housing market.

Sheila Bair, who recently stepped down as Federal Deposit Insurance Corp. chairman, in Congressional testimony has called for a wide-ranging audit of the problem. But other regulators so far haven't backed the idea, possibly fearing the consequences if the extent of the problem became known.

(Editing by Michael Williams)

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PREPARED STATEMENT OF SENATOR ROBERT MENENDEZ

Thank you all for being here today. This hearing of the Banking Committee is on a very important topic to our Nation's homeowners. I explored a similar topic in a hearing that I chaired in the Subcommittee on Housing, Transportation, and Community Development in May. It is of particular concern to the countless New Jersey homeowners who have contacted my office, almost all with terrible stories about their experiences going through foreclosure, and many with stories of being either mistreated or neglected by mortgage servicers. The typical problems they encounter are servicers losing their paperwork, not understanding what already happened the last time they called since they get a different person each time they call, lack of transparency as to whether their modification requests are being calculated properly, ineffective appeals, excessive delays in coming to decisions, and a general reluctance by servicers to modify loans in ways that would be sustainable in the long run. Overall the current process is both emotionally draining and ineffective in keeping people in their homes. Closely related to homeowner concerns are mortgage investor concerns about the conflicts of interest that many mortgage servicers face when deciding whether to foreclose or modify a loan.

In response to all of these concerns, numerous commentators have suggested national mortgage servicing standards as a way to provide consistency, accountability, and better homeowner and mortgage investor protections. There seems to be increasing consensus that at least some kind of national mortgage servicing standards are warranted, and I believe if they are done in the right way, they can actually make mortgage servicers' jobs easier too.

This is also a timely topic because Federal banking regulators including the OCC, Federal Reserve, FDIC, and OTS recently issued Consent Orders as enforcement actions against some of the largest banks to require changes in their mortgage servicing practices. These actions take a step in the direction of developing national mortgage servicing standards, but they're also too little and too late to help many homeowners. Fortunately the State Attorneys General settlement framework is providing some basis for discussion of these important issues as well. I look forward to hearing the testimony on this.

PREPARED STATEMENT OF JACK HOPKINS

PRESIDENT AND CHIEF EXECUTIVE OFFICER, CORTRUST BANK, SIOUX FALLS, SOUTH DAKOTA, ON BEHALF OF THE INDEPENDENT COMMUNITY BANKERS OF AMERICA

AUGUST 2, 2011

Chairman Johnson, Ranking Member Shelby, Members of the Committee, I am Jack Hopkins, President and CEO of CorTrust Bank, a $660 million asset, nationally chartered bank headquartered in Mitchell, South Dakota. As a third generation community banker, I am pleased to represent ICBA's nearly 5,000 members at this important hearing on "National Mortgage Servicing Standards."

As this Committee considers the development of national mortgage servicing standards, I urge you to ensure that they do not add to the regulatory burden of community banks, which are servicing their portfolios successfully and have not contributed to widely reported problems. We must preserve the role of community banks in mortgage servicing because the alternative is further consolidation in the servicing industry, which will only harm borrowers, especially those in rural and underserved housing markets.

CorTrust Bank was founded in 1930, at the outset of the Great Depression, and was built, tested, and proven under historically challenging economic conditions. We survived the Great Depression and numerous recessions since that time, including the most recent financial crisis, by practicing conservative, commonsense lending. We have emerged from the crisis well-capitalized and ready to lend to support the recovery. CorTrust Bank serves 16 communities in South Dakota, from Sioux Falls to rural communities with populations of less than 150, such as Artesian, where we were first chartered under the name Live Stock State Bank. We recently expanded into Minnesota.

Many ICBA member banks with similar stories—some have been in business for more than 100 years—have also emerged from the crisis well-capitalized. Despite the recent wave of bank failures and consolidations, I fully expect the community bank business model will thrive in the future, to the benefit of consumers, communities, and the economy.

Servicing Is Key to Relationship Banking and Helps Community Banks Remain Competitive

Residential mortgage lending has been an important component of CorTrust's business since its founding and has grown more important over the years. In 1988, we first began to sell mortgages into the secondary market in order to access additional funding. Today, we have a $552 million servicing portfolio consisting of approximately 5,000 loans.

About two thirds are held by Fannie Mae, and a smaller number are held by Freddie Mac and by the South Dakota Housing Authority.

Over the years, we have discovered that mortgage lending is a great way to cement long-term relations with customers and win the opportunity to serve their additional banking needs. But in order to sustain customer relations we need to service these loans, whether they are subsequently sold or held in portfolio. We also discovered that customers do care about who services their loans. They value, and even seek out, local servicing. If they have a question, they want to be able to pick up the phone or visit a branch and sit down with a banker in their community. We built a successful ad campaign—print, TV, online—around the advantage of local servicing. The campaign has resonated with consumers and boosted our mortgage sales. Notably, much of our recent business has come in the form of refinancing mortgages away from large lenders whose borrowers are frustrated with remote, faceless servicing performed outside the community.

Servicing is key to the marketing of mortgage originations, and together, origination and servicing are integral to our relationship-banking business model. Mortgage lending represents approximately 20 percent of our business, but its significance is greater than its percentage would suggest. Viewed narrowly, loan-for-loan, it would be more profitable for us to release servicing when we sell a loan. But we chose to keep servicing in-house, even though it's at best a break-even business, because it is central to our community bank business model.

CorTrust Bank's experience is typical of community banks. Servicing helps community banks remain competitive in the mortgage origination business. Today, community banks represent approximately 20 percent of the mortgage market, but more importantly, community bank mortgage lending is often concentrated in the rural areas and small towns of this country, which are not effectively served by large banks. For many rural and small town borrowers, a community bank loan is the only mortgage option. Any broad based recovery of the housing market must involve community bank mortgage lending.

Community bank servicing is based on close ties to customers and communities. Because CorTrust Bank's servicing team consists of only four people, customers always know who is on the other end of a telephone or across the desk. A customer who dials our 1-800 number will generally get one of two people on the line. Alternatively, a customer can walk into one of our 24 locations and deal with a staff person face-to-face.

Most importantly, we intervene early to keep mortgages out of default. We know, for example, when an employer closes in our community and how that closure impacts the income of our borrowers. A servicer based 1,000 miles away won't have such knowledge. Smaller servicing portfolios and better control of mortgage documents also provide an advantage over the large servicers. For these reasons, community banks have generally been able to identify repayment problems at the first signs of distress. Our staff will contact a late customer on the 16th day—the first day of delinquency—to find out what their circumstances are and discuss solutions.

Community Bank Servicing Improves Loan Performance

This personalized approach to servicing is a natural complement to conservative, commonsense underwriting. We make sure loans are affordable for our customers and they have the ability to repay. Loans are underwritten based on personal knowledge of the borrower and their circumstances—not based on statistical modeling done in another part of the country. We don't underwrite option adjustable rate mortgage (ARM) loans or other exotic credit products. This combination of quality, personalized underwriting and servicing yields results. CorTrust Bank's delinquency rate on loans transferred to Fannie Mae is 0.83 percent. Our delinquency rate on loans transferred to other programs is a bit higher, yielding an average delinquency rate of 1.7, which is consistent with the general pool of community bank originated loans and about one-third of the national average. In the most frenzied, exuberant years of mortgage lending, 2005 through 2007, the general pool of GSE loans was seriously delinquent at a rate four or five times higher than loans originated by community banks and sold to GSEs. In the history of CorTrust Bank mortgage lending, we've had very few mortgage loans go into foreclosure. Community bank originated and serviced mortgages perform better in all market conditions.

National Servicing Standards Should Exempt Community Banks

As a result of widely reported, abusive servicing at some large banks, "robo-signing," wrongful foreclosures, and other high profile scandals, Congress, the regulators, State officials, and the media have focused on servicing. In June, Fannie Mae published Announcement SVC-2011-08, "Delinquency Management and Default Prevention." These new servicing standards are very prescriptive with regard to the method and frequency of delinquent borrower contacts. They are a challenge to implement and have reduced our flexibility to use methods that have proved successful in holding down delinquency rates.

As Congress and the agencies consider how to address the deficient servicing standards of some large lenders, they must recognize community banks have fundamentally different standards, practices, and risks. Overly prescriptive servicing requirements should not be applied across the board. Examples of difficult and unnecessary requirements include rigid time lines for making contacts that leave no discretion to the servicer; mandatory property inspections; establishing a single point of contact for the borrower; the creation of a special servicing group for delinquent loans; requiring significant oversight of third-party providers; developing burdensome compliance programs; and annual independent audits of controls and processes. Many of the proposals I've seen would require us to establish a call center to comply, a prohibitive and unnecessary expense for a community bank such as mine. Our small size and our local presence in the communities we serve make many of these requirements unnecessary. For example, borrowers are able to quickly find the right person in the bank to address their issues.

In practice, community bank servicing is consistent with the goals and the spirit of national standards proposals I have seen, which promote more personalized service, improved accountability and control of documents. But, in the proposals I've seen, the means of achieving those goals are overly prescriptive. CorTrust Bank services loans with care, diligence, and accountability because quality servicing contributes to the reputation we enjoy in our communities. We don't need threat of enforcement to incentivize quality servicing.

The most significant risk in applying standards that are too rigid and prescriptive to all banks, regardless of size, is that the additional expense would cause many community banks to exit the mortgage servicing business and accelerate consolidation of the servicing industry, leaving it to the largest lenders. Loss of servicing would make it harder for community banks to compete for origination business and would thereby accelerate consolidation in that business as well. Were this to happen, rural and small town customers in particular would be left with fewer mortgage choices, interest rates and fees would be less competitive, and customer service and product choice would suffer. The secondary markets, without well-performing, community bank-originated loans to shore them, would be less stable. We all witnessed the danger and devastating fallout that resulted from the concentration of mortgage lending in a few major market players. We must promote beneficial competition and avoid further consolidation and concentration of the mortgage lending industry.

Any national standards developed by Congress or the regulators must exempt community bank lenders. There are a number of ways of accomplishing this. One possibility is to exempt lenders that are both below a threshold number of loans (or aggregate dollar value of loans) and whose delinquency rate is below its regional average. As a lender exceeds its regional average, servicing standards could be applied on an incremental basis, so that one delinquent loan does not bring on the full array of standards that apply to a large bank. However you choose to structure the exemption, I urge you not to tamper with our success in a service that is so important to our business and that of other community banks.

Servicing Compensation Must Cover Costs and Incentivize Diligent Servicing

A separate but related issue is compensation for servicing. Because the income provided by servicing is only enough to cover costs, ICBA is very concerned about a recent Federal Housing Finance Agency (FHFA) proposal to change both the method and the amount of compensation paid for servicing mortgage loans for Fannie Mae or Freddie Mac. The proposal would significantly reduce or eliminate all together the minimum servicing fee of 25 basis points earned for performing mortgages and would implement a specific fee paid for nonperforming loans. This proposal would result in a sharp reduction in mortgage servicing fee income for community banks, who predominantly service performing loans, and does nothing to improve the financial condition of Fannie Mae or Freddie Mac. Further, changing the servicing fee structure could cause significant change to the value of existing mortgage servicing rights held by community banks which may impact their capital position and likely increase consolidation of the servicing business. Moreover, by rewarding the servicers of nonperforming loans—and the originators who typically retain servicing rights—the proposal would create a perverse incentive. Loan servicing fees should be structured to incentivize diligent servicing, which can make the difference between keeping a loan current and a lapse into nonperformance.

Closing

Thank you for holding this hearing and for the opportunity to testify and present the good story of community bank mortgage servicing. For many community banks, servicing is integral to competitive mortgage origination and is a crucial aspect of relationship business lending. While I appreciate your concern with servicing practices that have harmed consumers and impeded the housing market recovery, I urge you not to tamper with the success of community banks in serving their customers and keeping loans out of delinquency.

PREPARED STATEMENT OF FAITH SCHWARTZ

EXECUTIVE DIRECTOR, HOPE NOW ALLIANCE

AUGUST 2, 2011

Introduction

Chairman Johnson, Ranking Member Shelby, and Members of the Committee, thank you for the opportunity to testify today. My name is Faith Schwartz. I am the Executive Director of the HOPE NOW Alliance and a cofounder of HOPE LoanPort®. [1] I have served in a leadership capacity at HOPE NOW since 2007, during which time I worked closely with members and partners of the Alliance, including mortgage servicers, investors, nonprofit housing counseling partners, Government agencies and regulators to help homeowners avoid foreclosure. Before my time with HOPE NOW, I served in various capacities in the housing finance industry for 28 years.

The comments I make today are my own and reflect my experience in the mortgage business and in particular, in working with servicers and counselors attempting to help at-risk homeowners. These comments do not necessarily represent the views of all HOPE NOW members. Attached to my testimony is an addendum on HOPE NOW data and supplemental facts from the HOPE NOW Alliance.

The Goal of National Servicing Standards

I am here today to speak to you about the goal of achieving strong National Servicing Standards which will require extraordinary cooperation and communication between the industry, the Government, and other concerned parties to evaluate the servicing standard initiatives now underway. We all want to improve the customer experience and the establishment of uniform, clear standards would be a strong step in that direction.

The members of HOPE NOW have been focused on assisting homeowners in need for the past 4 years. The joint efforts of servicers, nonprofits and other partners have helped millions avoid foreclosure, but unfortunately there are millions of homeowners who still remain at risk of losing their home. In addition to the estimated 4 plus million homeowners 60 days past due or in foreclosure, there are many customers current with their mortgage, but who struggle to make that payment every month letting other bills slip.

We are all aware that the current economic conditions—unemployment and underemployment in particular—are challenging for customers who are trying to maintain their home. Additionally, homeowners are frustrated by mixed messages from some loan servicers when they ask for help. Improvements have been made, but more needs to be done. These issues are part of the motivation for more uniform servicing standards. At the same time, it is important to recognize that national servicing standards may not change the final outcome for many homeowners at risk of foreclosure because of their economic situation, but customers need a servicing process that gives them timely responses and consistent answers regarding their loans.

[1] HOPE NOW is an alliance of counselors, mortgage lenders/servicers, investors, and other mortgage market participants to prevent foreclosures through outreach to delinquent borrowers, counseling, and loan workouts based on the borrower's ability to repay. The goal is to prevent foreclosures by connecting troubled borrowers with counselors and/or their mortgage servicer. HOPE LoanPort® is a Web-based tool that streamlines home retention applications on behalf of homeowners at-risk of foreclosure, allowing housing counselors to efficiently transmit completed applications to mortgage companies.

Improving the Customer Experience in Mortgage Servicing

Our alliance members recognize the importance of improving the customer experience in mortgage servicing and they have been working hard to achieve that goal. An ongoing demonstration of the effort on reaching customers directly is the large number of outreach events that HOPE NOW has helped organize around the country since the crisis hit. Loan servicers and nonprofit counselors have worked with HOPE NOW staff to set up events in different cities and around the country, spending 2, sometimes 3 days on the ground in distressed markets providing in person help to at-risk homeowners. HOPE NOW initiated the events in 2008 and when the Making Home Affordable program began, we partnered with Treasury to combine industry and Government efforts in joint events to reach more borrowers at risk and offer solutions in a timely manner.

Part of the focus at these events is to make sure that the customer walks away feeling that they have been helped or at the very least put on the right path to get help. Providing access to HUD approved housing counselors at the events has been a very important component of the free services offered to a borrower. If a borrower comes prepared with all the necessary documents and information, they may have the option to be underwritten on site and approved for a loan modification or other workout by their loan servicer, subject to various validations.

Together, we have held 112 outreach events. Just 3 weeks ago, HOPE NOW members and Making Home Affordable partners were in two cities in Florida and met with more than 2,000 homeowners. The latest totals for all outreach events reached 89,207 borrowers. Our follow up from those events indicates that 43.5 percent have been assisted by resolving their delinquencies without foreclosure sales. As an addendum to this testimony, there is a list of the communities in which HOPE NOW, partnering with our industry members, the Government Sponsored Enterprises (GSE), the United States Treasury, and nonprofit counselors have been to since we started holding outreach events in early 2008. It is also important to note that several of the larger servicers are holding their own company-sponsored events all over the country which directly reach their borrowers at risk in key markets.

Without question, the outreach events have improved the experience of many customers trying to resolve their mortgage difficulties through a face to face meeting with their loan servicer or counseling through a nonprofit agency. Our exit surveys reflect over 88 percent strong borrower satisfaction after they have a chance to meet face to face with their loan servicers. As many as 30–40 percent of those attending had never had contact with their servicer before the meeting. These numbers will vary slightly from market to market, but in every case the majority of homeowners who come to the events are delinquent on their loans and more than satisfied with the service they receive at the outreach event. We truly believe that nothing gives a distressed homeowner more peace of mind and satisfaction than sitting down face to face with someone and being able to discuss the options that are available to them. I have included as part of my addendum exit surveys from recent outreach events to give you a taste of how borrowers feel after coming to an event.

Another ongoing effort that was begun in 2006 is the Homeowner's HOPE hotline, the national 1-888-995-HOPE number that servicers and investors support financially, for homeowners to call to speak to a HUD certified counselor. The Homeowner's HOPE Hotline, operated by the Homeownership Preservation Foundation, has become the leading national hotline and has received over 5.2 million calls from borrowers seeking help with their mortgage.

Servicing Has Changed Dramatically

It is important to understand some of the history of mortgage servicing and how the tremendous challenges of the current crisis have impacted the mortgage servicing system.

In the decades before the current crisis, mortgage servicing developed some uniformity in part because of the requirements of GSEs and the Federal Housing Agency (FHA) for servicers on loans purchased by the GSEs or insured by FHA. In both cases these entities established requirements for mortgage servicing as well as requirements for other features of mortgage finance. In particular, the GSEs became the dominant force in setting standards in the industry and could dictate servicing rules and standards because they were the primary investor for the majority of the residential mortgage loans originated and serviced.

When the private label mortgage securities market grew in size in the late 1990s those private label securitization agreements dictated specific servicing terms that had to be followed by the servicers, and when details were missing, the practice was to default to the GSE rules as the industry standards. While the market functioned smoothly and delinquencies were generally low, these differences in servicing requirements were not meaningful.

However, once the dramatic downturn in the market occurred in the mid 2000s, the challenges facing servicers grew tremendously and differences in servicing requirements became more important. Prior to the crisis, servicing had been a fairly simple process of processing payments from current borrowers and forwarding those payments to investors. Servicers were paid a set fee for processing performing loans. Delinquent loans and troubled borrowers were a small segment generally handled by relatively small loss mitigation staffs and solutions often involved repayment plans to get borrowers back on track. The housing crisis completely changed the demands on major mortgage servicers. Servicers are now managing millions of delinquent loans and have had to hire thousands of new employees to work with borrowers to find solutions such as loan modifications which require a re-underwriting and contractual change in the terms of the original loan. This is a much more complicated servicing process that requires many more staff and additional training.

HOPE NOW was formed in great part to assist the industry in its attempts to deal with the new demands on servicing resulting from the housing crisis. It was also created to reach a growing number of borrowers who were going into default and were not contacting their servicer. The Alliance helped industry members to work together to find a process for offering loan modifications and other assistance to borrowers that were consistent with the requirements of investors. The alliance helped build a good working relationship with the nonprofit community and Government agencies to work together to stem the tide of foreclosures.

Today's Servicing Issues

The industry strongly supports a uniform approach to servicing standards. Progress is being made in providing better service to troubled homeowners, but there are a variety of initiatives and requirements from Federal regulators, the GSEs and others to set standards. These initiatives need to be evaluated and coordinated to determine the best overall standards. For example, let me address two of the main issues that are regularly discussed by industry, Government, and nonprofit groups: single point of contact and dual track processing.[2]

Single Point of Contact

In order to best help a homeowner in difficulty, a homeowner needs to be able to talk with a servicer representative who has the information on the customer's mortgage and the options that are available to assist them. A clear, consistent communication channel with someone in the servicing department will help the homeowner understand their options which may range from a loan modification, a short sale, to the need for unemployment forbearance. It is equally important that customers not be required to repeat the same request to various customer service representatives and that the information they provide about their income and payment situation be consistently available to all decision makers across the company. Finally, the customer needs to know that they have been informed of all options available and that their single point of contact or relationship manager at the company is able to confirm needed information and the status of their case.

All of our members are working to develop a single point of contact or relationship manager program that will meet those goals. Most of them have established or committed to establishing such a program. While different companies may have slightly different definitions of what a single point of contact is and what programs should be used to implement it, most programs include these key features:

1. The creation and training of servicing specialists who can serve as a relationship manager.
2. The designation of a group of employees to serve in that capacity, and in some cases the establishment of small teams that work together;
3. The ability to respond promptly to inquiries from borrowers and to immediately record the discussions with the borrower in the company's data files for that customer;
4. A knowledge of all of the mitigation programs that are available to the borrower and the ability to know when to refer that borrower to a specialist with

[2] Single point of contact has many definitions, but for this discussion it describes an individual or small team of individuals in a servicer that can communicate directly with a customer and have real time access to all the data in the customer's file in order to discuss the issues with the customer, direct the customer to the specialist in the organization for specific loss mitigation practices (*i.e.,* short sales, modifications, forbearance, *etc.*). Dual track processing is the practice of both proceeding to move a delinquent borrower toward foreclosure while at the same time trying to resolve with that borrower an alternative to foreclosure.

in-depth knowledge of one or more of those programs that might be suitable for that borrower;

5. The ability to connect that borrower with the specialist and then to follow that process through to the time that all alternative options have been considered and the borrower is either provided an alternative or the foreclosure sale occurs;
6. The ability for the contact person to reach out personally, as needed, to fully explain why an option might have been denied; and
7. In all instances to utilize a single point of contact to ensure consistent and appropriate feedback to the homeowner about their status in foreclosure.

Last month I visited a major servicer's shop to get a first-hand view of their effort to develop a single point of contact system. It was an excellent opportunity to actually see how a company is dealing with the growing number of servicing standard requirements. This company was hiring hundreds of people to become single point of contact managers. (Other servicers have reported they may hire up to thousands of additional staff for the single point of contact role.) The company's training programs lasted up to 6 weeks for these new hires. The long training was for two reasons—they want to make sure they get it right, but they also need time to educate this relationship manager of all the options that are available to at risk homeowners and the program requirements by the Government and GSEs. For a servicer representative to talk to a homeowner whose loan may be eligible for a Home Affordable Modification Program (HAMP), they had to refer to an eight inch thick black binder filled to the brim with the HAMP requirements for each loan evaluation. There was a large binder for each program and for each investor, to show what would be allowable for a specific loan.

Obviously, the ability to understand and explain the numerous Government, GSE, and other loss mitigation programs is daunting. In the Web-based world we live in, it is hard to believe that these binders were not online. The answer was that the consistent training, access to internal systems, and an additional system to navigate the numerous programs not housed in any one system remained a challenge.

That said, an impressive manager was charged with training for the new hires. The training emphasized consistent and empathetic ways to work closely with the borrower, and training on how to work with the several departments across the large organization. With this drive to make the system work more effectively for customers, I am confident they will establish a process that improves service to all their customers needing mortgage assistance. Seeing an organization at work in person was a good experience to understand the many factors in play for strengthening servicing performance in assisting borrowers.

Dual Track Processing

The dual track process is a confusing concept to many customers, and also confusing for our members to attempt to explain what it means and why it is happening to the homeowner. But the dual track process is driven in large part by investor requirements and State laws on foreclosures. For example, in many States once a servicer commences the foreclosure process by sending notice to the borrower, the steps that must be taken and the time frames in which they must be taken are directed in great part through State laws and regulations. Similarly, investors such as Fannie Mae and Freddie Mac have certain guidelines and time lines that require processing foreclosures while the efforts to modify loans continue simultaneously. There are rules that cover and protect homeowners from going to foreclosure if they are eligible for a modification and adhere to time lines for submitting documentation, validating income, and finalizing the modification or alternative solution prior to the foreclosure sale. In any event, the foreclosure process (which now exceeds 600 days in some areas of the country) continues with the exception of a 30 day process for review of eligibility for modifications. If a loan is in the midst of a modification review, the foreclosure sale process will not commence. Once referred to foreclosure, there are various pauses that will occur, and in no case should a foreclosure sale occur while under a review for a modification that falls within the HAMP or investor guidelines. Rules differ among investors as to what time lines are required. The GSEs are the most important investors setting requirements in the dual track process.

It is important to keep in mind that the investors' contracts continue to govern much of the latitude for servicers around foreclosures versus short sales and modifications. The investors and rules include HAMP, Fannie Mae, Freddie Mac, FHA, Veterans Administration (VA) and private securitization trusts. Often the most flexibility exists when a bank/servicer owns the loan in full on their balance sheet. These differences help explain the confusion in understanding the dual track issue.

Our servicer members generally follow a few clear practices on the dual track process:

1. They notify the borrower that a dual track process exists and how it works with the continuation of the foreclosure proceedings, including the continued delivery of statutorily required notices, but that no foreclosure sale will occur if the borrower is still being considered for a modification or is making payments under a trial modification;
2. The servicer attempts to come to an agreement with the borrower on a loan modification or other alternative to foreclosure for which the borrower might be eligible while the processes necessary to continue to the foreclosure sale continue;
3. If a modification is agreed upon and payments have been made to convert the trial modification to a permanent modification no further foreclosure notices will be sent; and
4. If no agreement for a modification can be reached, and trigger dates arise after which time the foreclosure sale must proceed, the servicer pauses and ensures by a separate review of the loan file that all viable options to foreclosure have been explored before notifying the foreclosure attorney to continue with the sale.

Multiple Efforts on Servicing Standards

In evaluating the need for uniform national servicing standards, it is important to understand the wide variety of rules and initiatives already in progress that servicers are attempting to understand and implement as they develop and utilize a single point of contact and address dual track processing issues. These are some of the current initiatives by Federal and State governments and the GSEs to set servicing standards, many of which have or will set single point of contact and dual track processing rules:

- The OCC consent orders of April, 2011, differ from institution to institution but all require specific practices relative to establishing and maintaining a single point of contact and safeguards and disclosure requirements when engaging in a dual track process with a delinquent homeowner.
- The Fannie Mae Servicer Guidelines describe a single point of contact as a Quality Right Party Contact (QRPC). The guidelines say that Fannie Mae will establish benchmarks to measure and monitor effective QRPC, and that it promotes single point of contact which supports those servicers who have or will implement single point of contact processes for the purpose of achieving contact continuity throughout the delinquency process.
- The Fannie Mae Guidelines also cover elements of dual track processing in a number of ways but do not specifically use that term. The guidelines establish uniform disclosure requirements for borrowers, including notices about the evaluation process and time line, explanation of the foreclosure process, and instances where foreclosure shall not be halted, as well as uniform content and timing requirements for solicitation during the foreclosure process.
- The Freddie Mac Servicer Guidelines also use the term QRPC, and is defined by a contact that occurs when a servicer identifies and discusses with a borrower, coborrower, or trusted advisor such as a housing counselor, the most appropriate options for delinquency resolution, and makes every attempt to achieve quality right party contact by establishing rapport with the borrower, expressing empathy with the borrower and a desire to help, determining the reason for the delinquency and whether it is temporary or permanent, determining whether the borrower has vacated the property or plans to do so, setting payment expectations and educating the borrower on the availability of foreclosure alternative solutions, and obtaining a commitment from the borrower to either resolve the delinquency through traditional methods (paying the total delinquent amount) or engage in a foreclosure alternative solution. It has similar, but not the same, guidance to that of Fannie Mae with respect to benchmarks for measuring effective QRPC and contact continuity.
- Freddie Mac language with respect to dual track is again similar but not identical to that of Fannie Mae.
- Treasury's Home Affordable Modification Program (HAMP) requires that each servicer must develop and implement a policy that identifies experience and training requirements for the relationship manager position and the appropriate caseload levels to ensure that relationship managers can successfully fulfill all specified requirements.

- Various States have servicing requirements which vary considerably from State to State. In the area of mediation, for example, some States may include opt in for mediation, and others may require opt out for mediation and the variations may not be clear on how many meetings are required for servicers send borrowers to meet face to face. Some States are silent on mediation.
- States' Attorneys Generals are in discussions with the top five servicers and while the content of their discussions remains confidential, it is very possible that they will have a broad list of required servicing requirements, including those relating to single point of contact and parallel tracks.
- Individual private investors require different servicing rules for various pools of securities. For servicers signed up with Making Home Affordable, some of that is mitigated but not all.
- The Board of Governors of the Federal Reserve System and other Federal banking regulators have called for uniform national servicing standards and many of those regulators are now in discussions to create new standards.
- The Consumer Financial Protection Agency (CFPB) has indicated they will work on servicing standards early on as they begin to stand up the agency.
- The proposed risk retention rule under Dodd Frank Act—specifically the Qualified Residential Mortgage (QRM) definition—includes servicing requirements. While these do not specifically refer to single point of contact, they do require rules in place in the contracts themselves which mandate default mitigation policies without regard to whether foreclosure proceedings are underway, therefore raising questions about dual track processing.
- The Federal Housing Finance Agency (FHFA), Fannie Mae and HUD unveiled an initiative on compensation of servicers, which will address a wide variety of servicing requirements, including different payments for noncurrent borrowers than the payments for current borrowers, and could conceivably address both dual track processing and single point of contact. This effort is in progress and adds to the changing landscape.

There are other servicing features that also differ from program to program. For example, as recently as July 25th, 2011, Treasury issued a Supplemental Directive 11-07 that expanded the minimum period of forbearance for unemployed borrowers under HAMP to 12 months from 3 months. That is consistent with the new policy issued by FHA, but is inconsistent with the policy followed by Fannie Mae and Freddie Mac and the VA.

Servicers faced with this daunting list find that they must frequently change the way they do business. That includes, not only changes in systems, but changes in training and educating staff throughout the organization. One solution, to which many servicers are attracted, is the establishment of a single uniform set of servicing standards which all State and Federal entities must accept, and which would establish the parameters for the GSEs, FHA and private investors.

We believe that the efforts by various entities currently underway are already moving in the direction of national standards for servicing. We recommend that there be coordination to ensure the definitions and policies set by different regulators, enforcement agencies and investors align with one another. If these efforts are given a certain amount of time to be put in place and reviewed, then major progress toward national standards will be achieved. To ensure that all these initiatives on servicing standards achieve their intended goal, we would suggest that the Administration convene a summit with all necessary partners from the industry, the Government, nonprofit agencies, and other concerned entities to review the new standards underway, evaluate them, and determine what should be included in a uniform national standard.

Uniform national servicing standards can help improve the customer experience as well as give servicers clarity on a single definition of the standards expected. We appreciate the difficulties in reaching agreement on servicing standards because the servicing process for delinquent loans is complex; there are multiple initiatives at the Federal and State levels on standards, and servicers are have programs already underway to improve assistance to customers.

Now is the time to coordinate and align the servicing standard initiative and make them work for all parties. This will help rebuild confidence in our housing finance system and assist in the recovery of the market. The home mortgage is the most important investment in the lives of most consumers, and it is essential that we "get right" the process for communicating to the customer whenever there is a change affecting their ability to meet their loan payment.

What Has Changed From 2007 to 2011?

Since the housing crisis began in 2007, there have been tremendous changes in the challenges facing homeowners; programs created to address the crisis; and the process for servicing loans. It is important to keep all of these events and factors in mind as we evaluate how to implement uniform servicing standards.

Subprime Crisis: When the crisis began in 2007, most of the early foreclosure prevention efforts focused on repayment plans, and some modifications, which entailed capitalizing missed payments (arrearages) and re-setting the mortgage. The HOPE NOW data indicates that in July 2007, there were 17,000 modifications completed. The primary focus was in the subprime products; the hybrid ARMs and option ARMs which were defaulting in record numbers, many prior to the ARM reset. In 2007, The Treasury Department and the Department of Housing (HUD) reached out to industry and asked them to increase and expand collaboration with nonprofits to reach more borrowers and help them avoid foreclosures wherever possible.

Through HOPE NOW, more servicers set up toll-free numbers for housing counselors. HOPE NOW servicers produced servicing guidelines to improve the loss mitigation process, and worked with third parties to reach homeowners who were not responding to contact from servicers. The housing crisis deepened with the recession and we saw more widespread defaults happening across loan portfolios—economic problems spread defaults to borrowers with prime, fixed-rate loans. Servicers continued to be proactive working with housing counselors and third parties, while hiring and expanding activity around foreclosure prevention efforts.

In 2007, there was few Government resources focused directly on foreclosure prevention. Mortgage servicers and others worked individually and then pulled together through HOPE NOW to meet the challenge, progress was made but the growth of the housing crisis outweighed the response.

Additionally, since 2008, the Government has taken on a broader role to address the crisis. The Government created programs to deal with several problem areas: refinances, unemployment assistance, modification, short sale and deed in lieu, and mediation (at the State level). Some of these programs are more successful than others and it is difficult to measure the full impact of the programs. However, a combination of factors has led to record longer foreclosure time lines as measured in 2010. The average loan in delinquency that went to foreclosure in 2010 exceeded 500 plus days, up from 300 days in 2008, according to a Lender Processing Services (LPS) report in early 2011. The following programs have been implemented by the Government to deal with the housing crisis:

1. *FHA HOPE for Homeowners* was an attempt to assist homeowners who might qualify to refinance to an FHA-insured loan with the participation of servicers and investors willing to write-down the existing loan. It also required the homeowner to share possible future appreciation of the property with the Government. There were few loans produced through the program in part because of its complexity. Originators and servicers have not been easy to match up with regard to refinancing higher risk loans and expanding short payoffs.

2. *Home Affordable Refinance Program (HARP) is the refinance portion of the MHA program* offered by the Fannie Mae and Freddie Mac. It is a first lien refinance program targeted to loans at 80 percent LTV up to 125 percent LTV. Essentially, it targeted borrowers who were current on their loan, but at-risk to become delinquent. From April 2009 through November 2010, FHFA reports 623,000 homeowners refinanced into this program. This is creative and an opportunity to continue reaching borrowers who could not otherwise refinance and may become future foreclosure candidates.

3. *Making Home Affordable: HAFA*—A short sale and deed in lieu program that focuses on a detailed process for the complicated nature of a "short sale" and deed in lieu product. The effort has key time lines, document and process requirements that need to be followed and extends the time line for loans for up to 120 days. It includes forgiveness of the deficiency when a borrower sells a property short of value and it offers clarity, accountability and clear expectations of what is required for realtors, servicers, and other stakeholders. Junior lien holders often require more dollars than HAFA supports. Recent adjustments to the program offered by Treasury suggest that this program may be used more in the future because of adjustments made to the requirements to prove hardship or stick to 31 percent DTI thresholds.

4. *Making Home Affordable: HAMP*—This is the loan modification program that was rolled out in response to the growing stress in the housing market. The crisis was deepening. By intervening with a loan modification that was subsidized by the Gov-

ernment, it was a change from the previous attempts to modify loans, and was an important step toward creating market standards.

- *Standards:* Despite criticism for falling short of projected numbers for permanent modifications, HAMP helped create standards that improved methods and transparency on how to achieve affordable and sustainable loan modifications.
- *Increasing Homeowner Awareness:* When the United States Government offers a potential solution to the loan modification process, the public listens. The awareness created by the HAMP program helped engage millions of at-risk homeowners in efforts to preserve their home and avoid foreclosure. The existence of the HAMP program helps attract borrowers to seek help. It is still a very valuable way for borrowers to get in the system, even if they do not qualify for a HAMP modification.
- *First line of defense for homeowners:* The HAMP program structure requires participating servicers to first review the borrower for HAMP eligibility prior to placing them into alternative modifications. Even if they do not ultimately qualify, borrowers are first assessed for eligibility for HAMP and then must be considered for other loan modifications or other workouts.
- *Safe Harbor:* HAMP created an industry "safe harbor" for modifying loans. Due to conflicting investor contracts, prior to HAMP it was difficult to identify a consistent "industry standard." HAMP helped create these standards and common practices The creation of tools to use in an evaluation "waterfall" and use of a Net Present Value test has transcended HAMP and is a model for servicers to use for proprietary modifications. This may transcend HAMP for other modifications as the process and a net present value test provide an "industry standard."
- *Structure created:* Through Making Home Affordable, Government HAMP modifications introduced clear guidance for the HAMP waterfall, including guidance for working with unemployed or underemployed borrowers—one of the most difficult situations. The protocols on structuring an affordable payment for borrowers include:
  - Forbearance (3–6 months, recently updated for HAMP and FHA loans to 12 months) for unemployed borrowers;
  - 31 percent housing DTI split by investors and Government dollars from 38 percent;
  - Use of lower interest rate to 2 percent, extended terms to 40 years, and principal deferral and/or principal write-down;
  - If ineligible, servicers must review for proprietary solutions (GSE, other), and if ineligible for that option;
  - Servicers must consider HAFA (Home Affordable Foreclosure Alternatives short sale and deed in lieu) or proprietary programs;
  - In many instances, foreclosure prevention will then state mediation requirement to review all solutions outside of foreclosure; and
  - Foreclosure sale as the final option.
- *Confusion and expanded time lines were the result of this early execution:* Average foreclosure time lines since in 2008, 2009, and 2010 are as follows (according to data from LPS):
  - January 2008—300 days
  - January 2009—350 days
  - January 2010—450 days
  - September 2010—500 days
  - May 2011—590 days

5. *Treasury: Hardest Hit Funds:* Treasury has also expanded foreclosure prevention programs by creating a Hardest Hit Fund. The Hardest Hit Fund distributed $7.5 billion dollars to 18 States and the District of Columbia and directed them to set up their own programs to assist unemployed and other at-risk homeowners in the hardest-hit housing markets. When a borrower is unemployed, it is difficult to qualify for a loan modification due to lack of income. State housing finance agencies develop the waterfall for approving borrowers for various means of assistance, including unemployment assistance, principle write down, and combined funds that may compliment a HAMP modification.

This deployment of dollars should be helpful to assist some homeowners in particularly distressed States where there are few other solutions. However, the States, Treasury, counselors, and State housing finance agencies must continue to work with industry to achieve some uniformity to ensure servicers can implement the many variations of programs in the different States. To help share information and increase the ability to execute on these programs, HOPE NOW has played a role in convening the stakeholders to discuss implementation issues. As a reminder, loan servicers need uniform standards and guidelines wherever possible for efficient execution. Each time a program is introduced, the more aligned it is with similar programs in various States with uniform automation, the more successful that new program will be.

6. *State Mediation Programs:* HOPE NOW has focused on the mediation issue as a high priority issue and convened States and the Federal Government to find common ground on what constitutes success. Mediation is a powerful tool that may be even more effective with a common definition of success with rules to get there (including early engagement with the borrower). There are now approximately 26 States that offer some kind of opt-in or opt-out mediation for homeowners. The physical presence of a third party is valuable for this final attempt to bring parties together to prevent a foreclosure. When appropriate mediation is a viable option, however, there is not enough data on mediation programs to make a clear judgment around the best mediation process. For instance, an author for the *Sun Sentinel* newspaper recently reported that Broward County, Florida examined 326 cases via mediation in December 2010 and 17 percent resulted in written settlements that avoided foreclosure. It is important we study mediation efforts going forward and wisely use our limited funds and human capital to make these most effective nationwide, and maximize assistance to qualified homeowners.

There is a movement among the other 24 States to incorporate mediation as another means to prevent foreclosures. In doing so, we believe certain risk parameters must first be addressed. By nature, mediation hearings delay the foreclosure process. And the intent is to ensure the borrower understands the options available to prevent foreclosure. We know from experience, sometimes borrowers in financial distress do not answer phones, open mail, and respond to more formal meeting requests such as State mandated mediation. Our goal over the coming months is to work with the stakeholders on mediation to come up with a set of recommendations that make sense for all parties, most importantly the homeowner at risk of foreclosure.

HOPE NOW stands ready to support all efforts to bring homeowners into the system to review options to avoid foreclosure. However, we believe that mediation can be streamlined with more effective processes so that all parties participating have aligned expectations.

Conclusion

HOPE NOW member companies and organizations support the improvement of the customer experience in mortgage servicing, and have been actively attempting to make the system work better for customers as they wrestle with an unprecedented number of delinquent loans. To evaluate the multiple servicing initiatives and rules now under way, the Administration should consider gathering all interested parties together to review the current servicing standard initiatives to ensure the definitions and policies agreed to by regulators, enforcement agencies and investors are consistent and to determine if a single uniform set of standards can be identified and established.

Improving customer communication; reducing confusion and conflicting directives for servicers will improve the mortgage servicing system. The home mortgage is the most important investment in the lives of most consumers, and it is essential that we have a sound servicing system in place to get through the current crisis and set the appropriate course for the future. The industry nonprofit partners and servicer members are committed to working to improve mortgage servicing for consumers.

ADDENDUM

HOPENOW Support & Guidance For Homeowners

HOPE NOW 2011 Mid-Year Report

Overview

HOPE NOW is the voluntary, industry-created alliance of mortgage servicers, investors, counselors, and other mortgage market participants that has implemented and coordinated
a comprehensive nationwide campaign to reach homeowners who may be at risk of losing their homes. HOPE NOW has completed four very active years of outreach and collaboration since its inception in 2007, and continues to do so in 2011.

Outreach to At-risk Homeowners

HOPE NOW members have engage
d in aggressive outreach to struggling homeowners via direct mail, phone and face to face events. HOPE NOW has coordinated and participated in several initiatives in partnership with the United States Treasury, Making Home Affordable, NeighborWorks® America and several regional and local partners.

Here are some brief facts about HOPE NOW's homeownership preservation efforts (through June 30, 2011):

- More than 87,000 borrowers have attended 112 events since 2008
- An average of 15 mortgage servicers have participated in these events
- HOPE NOW and its partners have visited over 60 cities since 2008, with multiple visits to many of the hardest hit areas.
- Six events have been held so far in 2011, with attendance of over 6,000 families
- Six more events are on the books for 2011, with 10 or more likely before the end of the year.
- Mortgage servicers have sent more than 5.5 million HOPE NOW letters to homeowners 60+ days or more delinquent who have not contacted their servicer.
- The Homeowner's HOPE™ Hotline, 888-995-HOPE™, which is managed by Homeownership Preservation Foundation, has connected more than 5 million homeowners to local, non-profit housing counselors since 2007.

National Survey Data Report

The HOPE NOW Data report is designed to provide a comprehensive overview of mortgage market trends and industry efforts to help homeowners avoid foreclosure. HOPE NOW is able to effectively quantify the efforts of the mortgage servicing industry by presenting data on a monthly basis regarding mortgage solutions that is unique and not reported by any other group.

Since July 2007 (and through April 2011), Servicers have:

- Completed 4.55 million permanent loan modifications:
  - 3.85 million were proprietary modifications
  - 699,000 were completed under the HAMP program
- Completed almost 13.6 million total workout solutions. This includes repayment plans, forbearance and other foreclosure prevention options.

Proprietary loan modifications since June 2010:

- 81% have included reduced principal and interest payments.
- 83% have had a fixed interest rate of five or more years.
- 58% have included reduced principal and interest payments of 10% or greater.

Quarterly Fly-Ins

HOPE NOW's unique quarterly meetings give servicers, counseling organizations and government entities a chance to sit down face to face and discuss key strategies and initiatives. The sessions afford the opportunity for important information regarding data, outreach, legislative/regulatory issues, mediation and foreclosure prevention strategies to be effectively disseminated across all organizations attached to the mortgage industry. These are valuable brainstorming sessions in which decisions are made that impact all parties involved. Representatives from approximately 35 organizations attended the last HOPE NOW fly-in. Generally, these events are well attended by several major executives across the industry as well as senior leaders from various non-profit and government regulatory agencies.

Issues Management

HOPE NOW engages industry leadership by collectively addressing challenges facing homeowners at risk, housing counselors communicating with homeowners and servicers, and implementation of home retention options for loan servicers. Our focus for 2011 has been:

- Best Practices for State Mediation
- Planning and execution on EHLP Dodd Frank HUD-administered unemployment program
- Coordination of Treasury "Hardest Hit Fund" programs for nineteen states
- "Fee for Service" for non-profit housing counselors, including through HOPE LoanPort
- Implementation of Making Home Affordable
- Collaboration of industry, government and non-profits

Information for Policymakers

HOPE NOW has made a concerted effort to provide policymakers with important mortgage servicing information via briefings and testimony. HOPE NOW regularly briefs Congressional Staff and has provided testimony to the House Financial Services Committee and the Joint Oversight Committee for Housing in California. HOPE NOW participates in industry conferences such as the National Fair Housing Alliance annual meeting, the Diversity in Financial Services Conference and the Five Star Institute's Annual Default Servicing Conference. For more information on HOPE NOW, please go to our website at HOPENOW.com

Support for HOPE LoanPort®

HOPE LoanPort® is a neutral non-profit web based communication tool created by HOPE NOW in 2009. Currently, HOPE LoanPort® operates as a separate non-profit entity. This free online tool streamlines home retention applications on behalf of homeowners, allowing housing counselors to efficiently transmit completed loan modification applications directly to servicers – effectively eliminating lost paperwork. Currently, the portal connects more than 2,700 non-profit housing counselors, from more than 600 non-profit housing counseling agencies to more than 800 users on the mortgage servicing side. The tool is currently live in all 50 states, the District of Columbia and Puerto Rico. As of June, 2011, HOPE LoanPort® has 15 participating mortgage servicers representing more than 80% of all loans serviced in the United States.

HOPE LoanPort® can be used for all home retention applications including HAMP, Fannie Mae, Freddie Mac, FHA, VA and other investor options.

HLP is testing pilots regarding communication for single point of contact, mediation for States and counselors, and implementation of short sales. Servicers and non-profits have agreed to standards that provide status updates for submitted applications every ten days. Additionally the tool is used to communicate approvals and denials based on 30 to 60 day approval cycles. More information about HOPE LoanPort® is available at www.hopeloanportal.org.

HOPENOW Support & Guidance For Homeowners

HOPE NOW Alliance Homeownership Preservation Workshops

The Homeownership Preservation Workshops are key outreach initiatives designed to allow homeowners at risk of foreclosure an opportunity to meet face to face with their mortgage servicer and/or a HUD approved counseling organization for free.

Since March 2008, over 85,000 families have received assistance through the face to face efforts. Recently Making Home Affordable and HOPE NOW have aligned efforts to assist more distressed homeowners. The strength of the outreach model includes partnerships with NeighborWorks America, Making Home Affordable, the GSEs, local n- profit counselors, elected officials, Federal Reserve Banks, local task forces and literally hundreds of volunteers.

Calendar for 2011 Outreach Events

Date	Locations	Counseling Agencies	Number of Servicers	Number of Borrowers Reached
20-Jan	Las Vegas NV	8	16	944
24-Feb	San Jose CA	9	17	1065
24-Mar	Phoenix AZ	12	18	714
28-Apr	Boston MA	25	19	588
6-Jun	Washington DC	8	15	616
17 & 18-Jun	Atlanta GA	10	22	2,157
11-Jul	Hollywood FL	10	17	1,333
13-Jul	Jacksonville FL	10	17	650
19-Aug	West Palm FL	TBD	TBD	TBD
23-Aug	Novi MI	TBD	TBD	TBD
27-Sep	Whippany NJ	TBD	TBD	TBD

Calendar for 2010 Outreach Events

Date	Locations	Counseling Agencies	Number of Servicers	Number of Borrowers Reached
1/27	Fort Meyers FL	6	15	750
1/29	Fort Lauderdale FL	8	15	1,079
2/20	Houston TX	8	15	899
2/26 - 2/27	Sacramento CA	15	14	1,501
3/9	Tucson AZ	8	12	531
3/11 - 3/13	Phoenix AZ	6	13	2,176
3/23	Portland OR	8	13	523
3/25	Seattle WA	5	13	796
4/6	Reno NV	6	8	728
4/8 - 4/10	Las Vegas NV	5	16	1635
4/17	Richmond VA	5	11	232
4/28 - 4/30	Long Island NY	21	10	2353
5/11-5/12	Anaheim CA	6	16	1296
5/14 -5/15	San Bernardino CA	4	13	1257
5/24	Columbus OH	7	13	460
5/26	Kansas City KS/MO	5	10	452
6/2	San Francisco CA	7	14	256
6/3-4	Oakland CA	12	14	1309
6/22	Pittsburgh PA	8	14	232

6/26	Washington DC	5	15	702
7/24	Minneapolis MN	7	14	620
7/30-31	Atlanta GA	13	17	2250
8/12	Denver CO	9	15	484
8/19	Milwaukee WI	9	17	512
9/16	Indianapolis IN	20	19	681
9/21	Kenner LA	6	12	696
9/23	Biloxi MS	13	14	264
9/25	Pensacola FL	5	14	311
9/28	Grand Rapids MI	4	15	299
9/30	Novi MI	10	17	802
10/21	San Diego CA	10	16	865
11/16	West Palm FL	5	17	1054
11/18	Miami FL	5	18	1522
Annual Total Number of Homeowners Reached				**29,572**

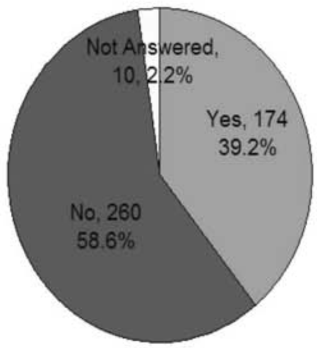
Calendar for 2009 Outreach Events

Date	Locations	Number of Non-Profit Counselors	Number of Servicers	Number of Borrowers Reached
January 10	Belleville, MI	Snowed out, only intake forms collected		323
January 15	Denver, CO	18	18	488
February 14	Hartford, CT	19	15	1013
February 26	Kansas City, MO	11	12	736
March 25	Newark, NJ	35	19	903
April 15 & 16	Atlanta, GA	15	20	3216
April 22 & 23	Miami, FL	11	23	2332
April 25	Charlotte, NC	9	18	536
May 7	Cleveland, OH	6	18	403
May 28	Orlando, FL	13	19	1583
June 4	St. Paul, MN	13	12	741
June 11	Fresno, CA	6	12	658
June 13	Bakersfield, CA	7	11	495
July 24,25	Las Vegas, NV	11	18	1569
July31, Aug 1	Phoenix, AZ	10	18	2782
August 27	Woodbridge ,VA	8	15	720
August 29	Springdale, MD	10	15	1100
September 17	Boston,MA	29	17	781
September 26	Tampa Bay, FL	14	14	986
October 22	San Diego, CA	8	15	957
October 24	Riverside, CA	10	15	2441
October 29	Atlanta, GA	16	11	2168
November 4	St. Louis, MO	12	12	722
November 7	Dallas, TX	8	17	845
November 19	Jacksonville FL	6	13	595
Dec 5	Detroit, MI	10	16	938
Dec 12	Los Angeles, CA	1	14	1395
Annual total Number of Homeowners Reached				**31,426**

Calendar for 2008 Outreach Events

Date	Locations	Number of Non-Profit Counselors	Number of Servicers	Number of Borrowers Reached
3-Mar	Riverside, CA	N/A	10	227
5-Mar	Anaheim, CA	N/A	10	267
7-Mar	Stockton, CA	N/A	12	411
30-Mar	Columbus, OH	5	12	170
1-Apr	Philadelphia, PA	30	14	328
19-Apr	Atlanta, GA	N/A	13	696
21-Apr	Milwaukee, WI	16	10	501
22-Apr	Indianapolis, IN	N/A	14	312
24-Apr	Chicago, IL	17	17	642
3-May	Memphis, TN	19	9	232
5-May	Jacksonville, FL	23	12	237
9-Jun	Dallas, TX	28	22	469
10-Jun	San Antonio, TX	12	11	150
June 13 & 14	Las Vegas, NV	N/A	15	1328
25-Jul	Newark, NJ	23	12	193
26-Jul	Mount Laurel, NJ	10	12	206
12-Aug	Boston, MA	52	20	2176
21-Aug	Orlando, FL	7	19	1008
22-Aug	Estero, FL	9	17	614
23-Aug	Ft Lauderdale/Miami, FL	14	19	1695
13-Sep	Fairfax County, VA	15	12	241
20-Sep	Prince Georges Co., MD	15	12	100
22-Oct	Tucson, AZ	21	17	490
23-Oct	Phoenix, AZ	22	17	1815
15-Nov	Houston, TX	9	18	953
19-Nov	Cleveland, OH	14	20	671
20-Nov	Cincinnati, OH	18	15	366
4-Dec	Sacramento, CA	18	19	2050
6-Dec	Los Angeles, CA	14	21	1635
Annual total Number of Homeowners Reached				**20,183**

First Contact with Mortgage Company/Counselor



39.2% of respondents indicated that it was their first time contacting a mortgage company or non-profit counselor to get help with mortgage payments. This is slightly higher than the cumulative average for the 'Yes' response of 36.0%*.

*Note: Cumulative calculations include all 51 workshops with exit surveys in 2009-2011.

Help for America's Homeowners
MAKING HOME AFFORDABLE

Likelihood of Recommending the Workshop

	Phoenix		Cumulative Total – All Workshops*	
	Count	Percent	Count	Percent
Very Unlikely	17	3.9%	387	2.8%
Unlikely	13	3.0%	288	2.0%
Neutral	38	8.8%	1003	7.2%
Likely	114	26.3%	3125	22.3%
Very Likely	251	58.0%	9212	65.7%
Not Answered	11	N/A	610	N/A
TOTAL	**444**	**100.0%**	**14,625**	**100.0%**
MEAN (All Data)**	**4.3 (Likely)**		**4.5 (Likely)**	

84.3% of respondents in Phoenix were Very Likely or Likely to recommend the workshop. This is lower than the corresponding cumulative percentage of 88.0%*.

*Note: Cumulative calculations include all 51 workshops with exit surveys in 2009-2011.
**MEAN score is out of 5.0; 1=Very Unlikely and 5=Very Likely
Not Answered responses are not included in determining satisfaction Percent or MEAN results.

HOPENOW Support & Guidance For Homeowners

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HOPE NOW: May Mortgage Loan Data Shows 2nd Straight Month of Declines in Foreclosure Sales

85K Permanent Loan Mods for Homeowners Completed for the Month

(WASHINGTON, DC) – HOPE NOW, the voluntary, private sector alliance of mortgage servicers, investors, mortgage insurers and non-profit counselors, released its May 2011 mortgage industry data, which estimates declines in foreclosure sales for the second straight month.

According to the survey data, foreclosure sales nationwide were approximately 68,000, down from 73,000 in the month of April, representing a decrease of 7%. Foreclosure starts were up for the month, with 176,000 reported versus 163,000 for the month of April, an increase of 8%.

For the month, permanent loan modifications for homeowners were approximately 85,000, virtually unchanged from the month of April (86,000). Of the total number, approximately 53,000 were proprietary modifications and 32,398 were completed under the Home Affordable Modification Program (HAMP).

A breakdown of proprietary modifications showed 78% (41,000) included reduced principal and interest payments, 88% (47,000) had a fixed interest rate of five or more years and 57% (30,000) had reduced principal and interest payments of more than 10%.

Here is the full breakdown of the May 2011 data:

- Loan modifications:
  - Loan modifications completed under HAMP were 32,398, up from 28,867 in April – an increase of 12%.
  - Proprietary modifications for the month were approximately 53,000, down from 57,000 in April– a decrease of 7%.

- Proprietary loan modification characteristics:
  - Loan modifications with reduced principal and interest payments accounted for approximately 78% (41,000) of all proprietary modifications.
  - Loan modifications with reduced principal and interest payments by 10% or greater accounted for approximately 57% (30,000) of all proprietary modifications.
  - Fixed-rate modifications (initial fixed period of 5 years or more) accounted for 88% (47,000) of all proprietary modifications.

- Loan modification performance:

  - Proprietary loan modifications with 90+ day delinquency (recidivism) remained flat with just a 1% increase from the previous month - 244,000 vs. 240,000 on active loan modifications.

- Foreclosures:
  - Foreclosure starts for the month were 176,000, up from the 163,000 reported for April 2011 – an increase of 8%.
  - Completed foreclosure sales for the month were approximately 68,000, down from the 73,000 reported for April 2011 – a decrease of 7%.

- Delinquencies:
  - 60+ days delinquencies remained relatively flat for the month at 2.67 million, compared to 2.65 million reported in April 2011, an increase of 1%.

Faith Schwartz, Executive Director, issued this statement:

"HOPE NOW's monthly data report is designed to provide a comprehensive overview of mortgage market trends and industry efforts to help homeowners avoid foreclosure. While we have seen loan modifications flatten out in recent months, the overall numbers continue to illustrate the size and scope of what mortgage servicers, and their non-profit and government partners, have achieved on behalf of at-risk homeowners.

Despite increases in foreclosure starts and a decrease in proprietary modifications this month, there were still a few bright spots in fewer foreclosure sales, an increase in HAMP loan modifications and the third straight month of relatively flat 60+ day delinquencies.

Additionally, performance of proprietary loan modifications remains strong, with 78% including reduced principal and interest payments and almost 90% including a fixed interest rate of five or more years. These facts translate into affordable and sustainable loan modifications for homeowners.

Loan servicers now have more tools at their disposal to assist homeowners. Several government initiatives have been recently introduced as well, to augment the programs already available. These include the HUD Emergency Homeowner Loan Program (EHLP) targeting unemployed homeowners in 31 States, the US Treasury's Hardest Hit Fund program deployed in 19 states and the District of Columbia, and the recent announcement of forbearance for up to 12 months or more for unemployed borrowers who are currently in an FHA loan program. These programs geared towards unemployed borrowers are increasingly important as the nation's unemployment rate hovers around 9%, with much higher rates in some of the harder hit markets.

This combination of new tools and extraordinary outreach efforts has resulted in the most comprehensive set of solutions available to at-risk homeowners to date.

Since 2007, mortgage servicers have completed 4.6 million permanent loan modifications for the nation's homeowners and there has been no slow down in the efforts to keep as many families as possible in their homes. Going forward, the industry, and its partners, remains committed to comprehensive homeowner outreach, improved customer experience, use of new technology and expansive education about all of the options available to struggling homeowners."

HOPENOW

Support & Guidance For Homeowners

Snapshot
Industry Extrapolations and HAMP Metrics

	Q3-2010	Q4-2010	Q1-2011	Mar-2011	Apr-2011	May-2011
Total Completed Modifications	444,787	345,197	300,145	113,018	85,901	85,280
HAMP Permanent Modifications[1]	97,877	83,752	90,536	36,432	28,867	32,398
Proprietary Modifications Completed[2]	346,910	261,445	209,609	76,586	57,034	52,882

Proprietary Modifications Completed

Reduced P&I Modifications	294,190	217,700	169,452	61,710	46,547	41,177
% of Proprietary Modifications	85%	83%	81%	81%	82%	78%
Fixed Rate Modifications[3] (initial fixed period of 5 years or more)	284,815	236,519	168,343	58,028	44,562	46,760
% of Proprietary Modifications	82%	90%	80%	76%	78%	88%
Reduced P&I Modifications (10% or greater)	185,015	177,976	119,422	39,502	30,312	30,255
% of Proprietary Modifications	53%	68%	57%	52%	53%	57%

Foreclosure Starts	709,119	656,904	601,363	217,413	162,860	175,587
Foreclosure Sales	313,949	180,818	219,708	84,662	73,105	67,827
60+ Days Delinquency	3,172,424	3,019,282	2,755,776	2,595,041	2,654,421	2,674,492

[1]Source - Making Home Affordable. Estimated.

[2]Extrapolated. Modifications Completed was revised in December 2009 to include Current Modifications and specifically exclude HAMP.

*Survey data may be restated from time to time based on servicers' collection and reporting. HOPE NOW reports and extrapolates data as provided by servicers to a third-party data aggregation vendor. Any data changes will be reflected in monthly reporting.

HOPE NOW is the industry-created alliance of mortgage servicers, investors, counselors, and other mortgage market participants, brought together by the Financial Services Roundtable, Housing Policy Council and Mortgage Bankers Association, that has developed and is implementing a coordinated plan to help as many homeowners as possible prevent foreclosure and stay in their homes. For more information go to www.HopeNow.com or call the free Homeowner's HOPE™ Hotline at (888) 995-HOPE™.

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HOPE NOW
Industry Extrapolations and Metrics (May 2011)

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July 7, 2011

HOPE NOW
Industry Market Coverage

INDUSTRY MARKET COVERAGE
Millions of Residential Mortgage Loans

	Loan Count				
	Hope Now Alliance Survey (May 2011)	MBA Delinquency Survey (Q1-2011)*	MBA Survey Extrapolated to Total Industry	Hope Now Estimated Percent of Industry	# of Hope Now Companies Reporting
Total	35.0	43.7	49.7	70.5%	20
Prime	31.0	39.5	44.9	68.9%	15
Subprime	4.1	4.2	4.8	85.3%	18

*"MBA Delinquency Survey" data is for Q1-2011, while "HOPE NOW Alliance Survey" data is for May 2011. MBA estimates that its survey covers approximately 88% of the total industry. "Hope Now Estimated Percent of Industry" is derived by dividing "Hope Now Alliance Survey" (May 2011) by "MBA Survey Extrapolated to Total Industry" (Q1-2011). "Hope Now Estimated Percent of Industry" estimates may increase or decrease slightly when the MBA releases its Delinquency Survev data for Q2-2011.

**Survey data may be restated from time to time based on servicers' collection and reporting. HOPE NOW reports and extrapolates data as provided by servicers to a third-party data aggregation vendor. Any data changes will be reflected in monthly reporting.

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HOPE NOW

Total Solutions

Industry Extrapolations and HAMP Metrics (July 2007 - May 2011)

"LIFE TO DATE" TOTAL SOLUTIONS

	Q3-Q4 2007	2008	2009	2010	Q1-2011	Mar-11	Apr-11	May-11	"Life to Date" Total
Total Solutions	912,671	2,258,603	4,252,078	4,811,663	1,029,276	359,106	314,810	285,076	**13,864,177**
HAMP Permanent Modifications[1]	N/A	N/A	66,938	512,712	90,536	36,432	28,867	32,398	**731,451**
HAMP Trial Modifications[1]	N/A	N/A	955,000	524,000	92,000	30,000	27,000	16,723	**1,614,723**
Proprietary Modifications Completed[2]	206,240	961,355	1,172,490	1,245,757	209,609	76,586	57,034	52,882	**3,905,369**
Other Workout Plans Completed (Non-HAMP)[3]	706,431	1,297,248	2,057,649	2,529,194	637,131	216,088	201,908	183,073	**7,612,634**

[1]Source - Making Home Affordable. Estimated.

[2]Based on "MBA Delinquency Survey" for Q1-2011. MBA estimates that its survey covers approximately 88% of the total industry. HOPE NOW data estimates for April and May 2011 may increase or decrease slightly when the MBA releases its Delinquency Survey data for Q2-2011.

[3]Extrapolated. Other Workout Plans Completed is comprised of Repayment Plans Initiated (tracked from Q3-2007), Other Retention Plans Completed and Liquidation Plans (tracked from December 2009).

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HOPE NOW

"Life to Date" Completed Modifications

Industry Extrapolations and HAMP Metrics (July 2007 - May 2011)

"LIFE TO DATE" COMPLETED MODIFICATIONS

	Q3-Q4 2007	2008	2009	2010	Q1-2011	Mar-2011	Apr-2011	May-2011	"Life to Date" Total
Total Completed Modifications	206,240	961,355	1,239,428	1,758,469	300,145	113,018	85,901	85,280	**4,636,820**
HAMP Permanent Modifications[1]	N/A	N/A	66,938	512,712	90,536	36,432	28,867	32,398	**731,451**
Proprietary Modifications Completed[2]	206,240	961,355	1,172,490	1,245,757	209,609	76,586	57,034	52,882	**3,905,369**

[1]Source - Making Home Affordable. Estimated.

[2]Extrapolated. Modifications Completed was revised in December 2009 to include Current Modifications and specifically exclude HAMP.

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HOPE NOW
Total Solutions
Industry Extrapolations

WORKOUT PLANS (Non-HAMP)

	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Total Jul-07 to May-11
Total Workout Plans (Non-HAMP)	251,105	308,475	261,930	239,972	258,595	226,981	204,288	**10,991,566**
Prime	165,447	214,822	179,068	159,195	169,626	149,867	133,230	6,212,991
Subprime	85,658	93,653	82,862	80,778	88,969	77,114	71,057	4,778,575
Owner-Occupied	236,295	290,803	244,319	222,757	237,431	210,736	189,945	4,556,209
Non-Owner Occupied	15,086	17,723	18,658	17,216	21,204	16,261	14,359	337,412
Repayment Plans Initiated[1]	106,886	157,572	121,767	116,290	114,169	92,083	92,476	**5,843,172**
Prime	74,279	125,930	95,579	91,090	87,487	70,502	70,332	3,786,647
Subprime	32,607	31,642	26,188	25,200	26,681	21,581	22,144	2,056,525
Owner-Occupied	100,789	149,858	115,841	110,092	107,451	86,934	87,409	1,862,589
Non-Owner Occupied	6,120	7,748	6,104	6,198	6,743	5,160	5,072	113,997
Proprietary Modifications Completed[2]	81,200	80,433	72,189	60,833	76,586	57,034	52,882	**3,905,369**
Prime	55,977	50,701	47,165	37,486	47,148	32,367	32,456	1,728,374
Subprime	25,223	29,732	25,024	23,348	29,439	24,667	20,426	2,176,994
Owner-Occupied	76,619	75,558	66,797	54,988	68,042	52,398	48,352	1,553,462
Non-Owner Occupied	4,601	4,892	6,160	5,846	8,559	4,641	4,542	119,109
Other Retention Plans Completed[3]	63,019	70,470	67,974	62,849	67,840	77,863	58,929	**1,243,026**
Prime	35,191	38,192	36,325	30,619	34,991	46,998	30,442	697,970
Subprime	27,827	32,279	31,650	32,230	32,849	30,865	28,487	545,056
Owner-Occupied	58,887	65,387	61,682	57,676	61,938	71,404	54,184	1,140,157
Non-Owner Occupied	4,365	5,084	6,395	5,172	5,902	6,459	4,745	104,306

[1]Definition of this field was revised in December 2009. HOPE NOW also began collecting Occupancy data at this time.

[2]Proprietary Modifications Completed was revised in December 2009 to include Current Modifications and specifically exclude HAMP.

[3]Other Retention Plans Completed is a new field added in December 2009. It is defined as the number of loans where the customer completed the terms of other retention plan such as: FHA Partial Claim, FHA Secured, VA Refund, Stipulated Repayment / Stip-to-Mod, Forbearance Plans, MI Claim Advance, Reaged / Deferred / Extended, FNMA Home Saver Forbearance, Payment Reduction Plan, or other GSE-sponsored forbearance program.

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HOPE NOW
Proprietary Modifications (Non-HAMP)
Industry Extrapolations (November 2010 - May 2011)

PROPRIETARY MODIFICATIONS (Non-HAMP)[1]

	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Total Dec-09 to May-11
Proprietary Modifications[2]	81,200	80,433	72,189	60,833	76,586	57,034	52,882	**1,666,841**
Proprietary Reduced P&I Modifications	68,043	65,844	58,538	49,204	61,710	46,547	41,177	**1,340,579**
% of Proprietary Modifications	84%	82%	81%	81%	81%	82%	78%	80%
Proprietary Fixed Rate Modifications[3] (initial fixed period of 5 years or more)	72,970	73,687	61,144	49,172	58,028	44,562	46,760	**870,564**
% of Proprietary Modifications	90%	92%	85%	81%	76%	78%	88%	83%
Proprietary Reduced P&I Modifications[3] (10% or greater)	55,704	52,422	44,379	35,541	39,502	30,312	30,255	**608,335**
% of Proprietary Modifications	69%	65%	61%	58%	52%	53%	57%	58%

[1]Based on "MBA Delinquency Survey" for Q1-2011. MBA estimates that its survey covers approximately 88% of the total industry. HOPE NOW data estimates for April and May 2011 may increase or decrease slightly when the MBA releases its Delinquency Survey data for Q2-2011.

[2]Definition of Modification Field was adjusted in December 2009 to reflect Proprietary Modifications (specifically excluding HAMP) and include Current Modifications.

[3]Total for this field begins in June 2010.

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HOPE NOW
60+ Delinquency
Industry Extrapolations

60+ DELINQUENCY (All Loans)

In thousands except for ratios	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	**May-11**
Number of Estimated Industry Loans[1]	49,522	49,522	49,692	49,692	49,692	49,692	49,692
Prime	44,719	44,719	44,942	44,942	44,942	44,942	44,942
Subprime	4,802	4,802	4,750	4,750	4,750	4,750	4,750
Owner-Occupied	44,914	44,918	45,158	45,185	45,221	45,107	45,109
Non-Owner Occupied	4,608	4,604	4,513	4,508	4,473	4,585	4,587
60+ Days Delinquency	3,017	2,970	2,923	2,749	2,595	2,654	2,674
Prime	2,048	1,991	2,006	1,874	1,758	1,808	1,806
Subprime	968	979	917	874	837	847	869
Owner-Occupied	2,684	2,643	2,642	2,482	2,333	2,347	2,368
Non-Owner Occupied	327	323	278	267	258	304	303
60 Days+ Delinquency (Percentage of Total Loans)	6%	6%	6%	6%	5%	5%	5%
Prime	5%	4%	4%	4%	4%	4%	4%
Subprime	20%	20%	19%	18%	18%	18%	18%
Owner-Occupied	6%	6%	6%	5%	5%	5%	5%
Non-Owner Occupied	7%	7%	6%	6%	6%	7%	7%

[1]Based on "MBA Delinquency Survey" for Q1-2011. MBA estimates that its survey covers approximately 88% of the total industry. HOPE NOW data estimates for April and May 2011 may increase or decrease slightly when the MBA releases its Delinquency Survey data for Q2-2011.

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HOPE NOW
Foreclosure Starts and Sales
Industry Extrapolations (November 2010 - May 2011)

FORECLOSURE STARTS (All Loans)

	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	**May-11**
Total	218,854	235,006	204,218	179,732	217,413	162,860	175,587
Prime	157,622	176,003	154,001	134,988	165,642	123,134	132,258
Subprime	61,232	59,003	50,217	44,744	51,771	39,726	43,330
Owner-Occupied	185,719	203,268	182,323	159,494	188,395	143,355	153,723
Non-Owner Occupied	32,743	31,452	26,261	20,238	28,789	19,292	21,690

FORECLOSURE SALES (All Loans)

	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	**May-11**
Total	54,580	57,735	72,546	62,500	84,662	73,105	67,827
Prime	39,558	42,195	56,335	47,208	66,701	56,308	50,902
Subprime	15,022	15,539	16,211	15,291	17,961	16,796	16,925
Owner-Occupied	38,208	39,844	52,324	45,564	64,197	55,853	51,534
Non-Owner Occupied	15,443	17,016	19,806	16,936	19,864	16,671	15,681

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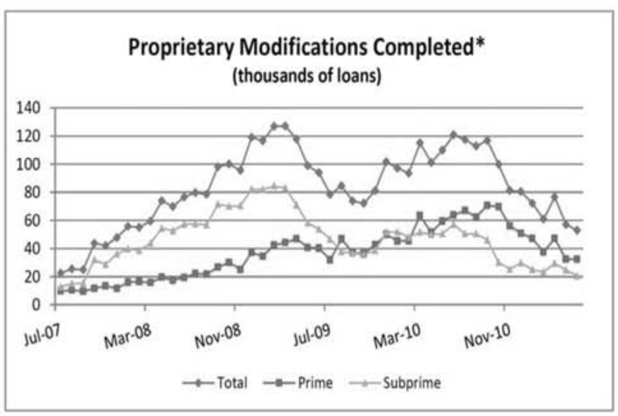
HOPE NOW

Industry Extrapolations and HAMP Metrics
May 2011

Source: Making Home Affordable and HOPE NOW

*Total Solutions is comprised of HAMP Permanent and Trial Loans, Proprietary Modifications Completed, Repayment Plans Initiated, Other Retention Plans Completed, Short Sales and Deed-in-Lieu



*Non-HAMP

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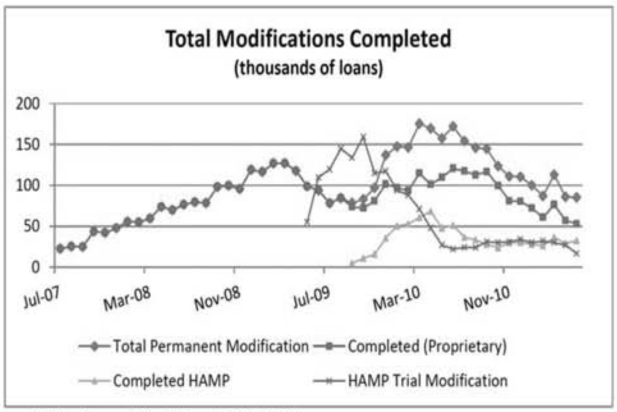
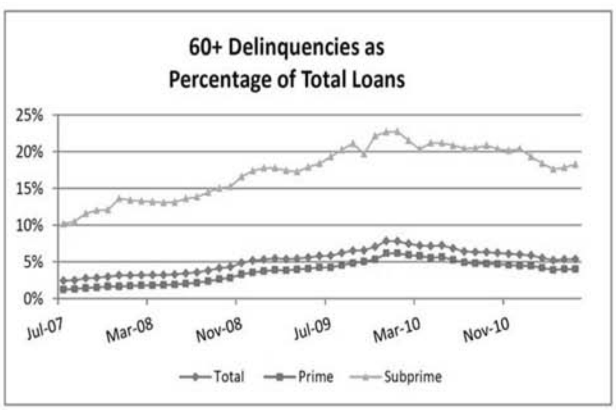
HOPE NOW

Industry Extrapolations and HAMP Metrics
May 2011



Source: Making Home Affordable and HOPE NOW
Total Permanent Modifications is the sum of Completed HAMP and Completed (Proprietary). HOPE NOW has collected data on Completed (Proprietary) Modifications since 2007. Data for HAMP Trial Modifications began in May 2009 while data for Completed HAMP loans began in September 2009.



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HOPE NOW

Industry Extrapolations and HAMP Metrics
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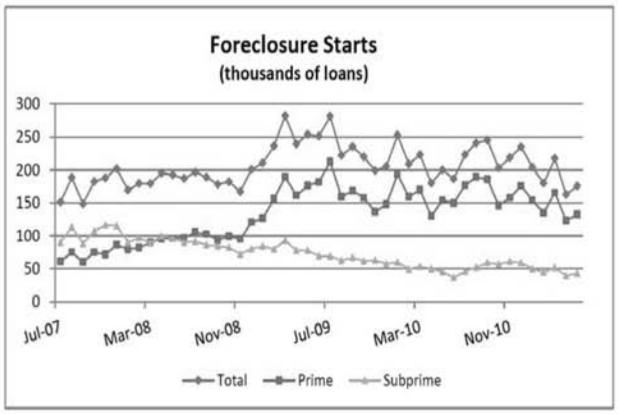

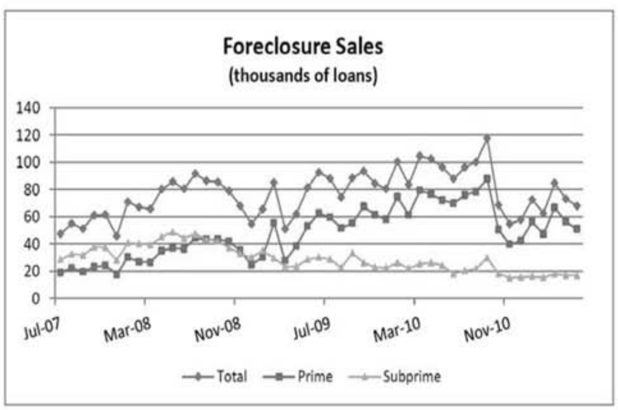

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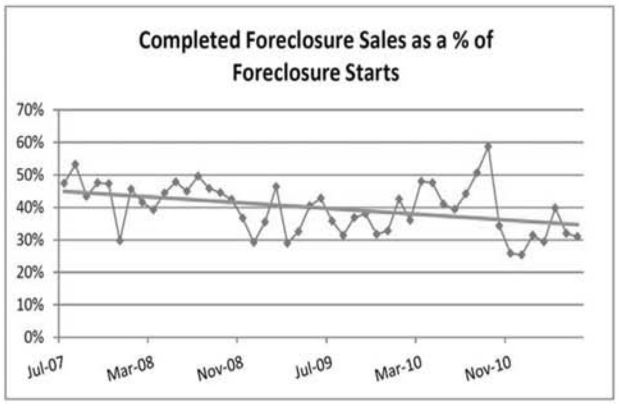
HOPE NOW

Industry Extrapolations and HAMP Metrics
May 2011



Source: Freddie Mac State Foreclosure Timelines and HOPE NOW

*There is a time lag between a foreclosure start and its completion. During this time many foreclosure starts drop out for a variety of reasons. The time lag varies for individual states, ranging between 2 and 12 months. The percentages in this graph adjust for this lag. The weighted average time between foreclosure start to completion is approximately 6 months. This is calculated by multiplying the number of loans for each state by the average time from foreclosure initiation to completed foreclosure sale, summing the results for all states, and then dividing the aggregate by the total number of loans for all states.

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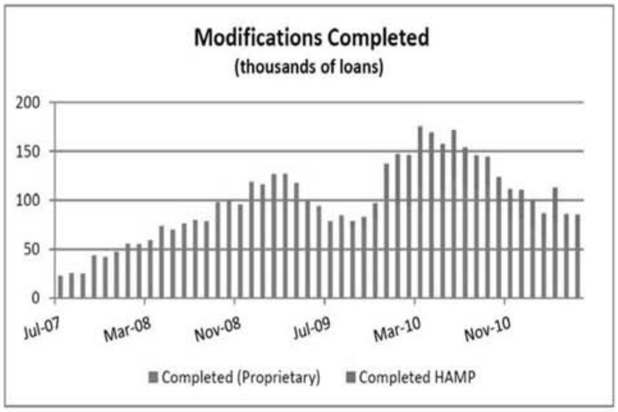
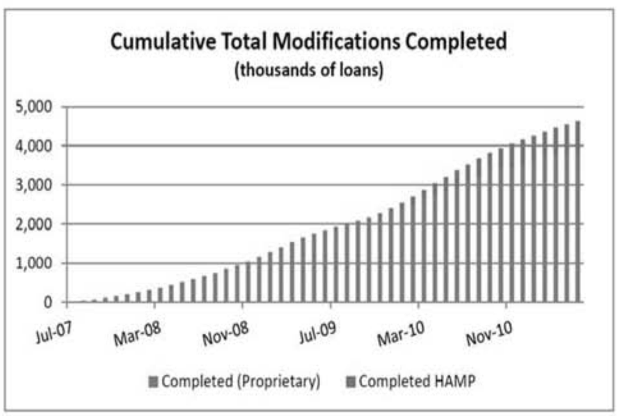
HOPE NOW

Industry Extrapolations and HAMP Metrics
May 2011





Source: Making Home Affordable and HOPE NOW
HOPE NOW has collected data on Completed (Proprietary) Modifications since 2007. Data for Completed HAMP loans began in September 2009.

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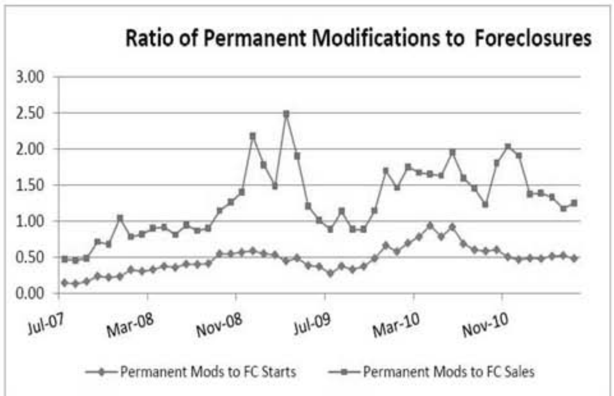
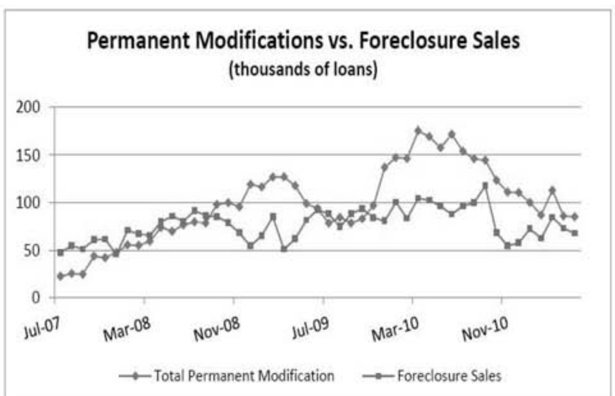
HOPE NOW
Industry Extrapolations and HAMP Metrics
May 2011





Source: Making Home Affordable and HOPE NOW
Permanent Modifications is the sum of Completed HAMP and Completed (Proprietary).
HOPE NOW has collected data on Completed (Proprietary) Modifications since 2007. Data for Completed HAMP loans began in September 2009.

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HOPE LoanPort®, powered by RxOffice ® and developed by the HOPE NOW Alliance, is a new web-based tool that streamlines home retention applications on behalf of homeowners at-risk of foreclosure, allowing housing counselors to efficiently transmit completed applications to mortgage companies. HOPE LoanPort® is designed to improve the quality of both the application by gathering the required information and documentation and transmitting it to partner mortgage servicers application.

HOPE LoanPort

How does an at-risk homeowner use HOPE LoanPort®?

- Contacts a participating US Department of Housing & Urban Development (HUD) approved non-profit counselor(s) in the HOPE LoanPort® network.
- Counselor gathers all information and documentation from homeowner and completes application through HOPE LoanPort®.
- Complete application is sent electronically to the homeowner's mortgage servicer. Documents and information cannot be lost.
- Applications are updated with current status every 10 business days through HOPE LoanPort® by all partners.

What are the benefits of HOPE LoanPort®?

- Secure electronic submission of completed modification applications.
- Standardization of required application data elements and supporting documents.
- Electronic verification that the mortgage servicer has received the fully completed modification package.
- Messaging of application statuses between counselor and mortgage servicer.
- Migration away from faxes, redundant telephone calls, and lost documents.
- Integrates seamlessly with counselor and servicing systems.

Who is using HOPE LoanPort®?

- Open to HUD-Approved housing counseling agencies and National Foreclosure Mitigation Counseling Program (NFMC) recipients.
- Approximately 540 counseling organizations, 2,300 counselors in 46 states and the District of Columbia, as well as Puerto Rico are active on HOPE Loan Port®.
- Fourteen (14) mortgage servicers are currently using HOPE LoanPort®: American Home Mortgage Servicing, Inc., Bank of America, Bayview Loan Servicing, JP Morgan Chase, Citi Mortgage, GMAC, Met Life® Home Loans, NationStar, Ocwen Loan Servicing, OneWest Bank, PNC Mortgage, Saxon Mortgage Services, SunTrust Mortgage, Inc. and Wells Fargo Home Mortgage. Almost 800 servicer users are currently online.
- Supported by state housing finance agencies in four states: Arizona, Nevada, Ohio & Maryland, as well the North Carolina Department of Banking.

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Single Point of Contact Guidelines Comparison

HOPENOW Support & Guidance For Homeowners

	FANNIE MAE	FREDDIE MAC	MHA
Borrower Contact			
Quality Right Party Contact	Introduce a uniform definition of Quality Right Party Contact (QRPC). Benchmarks will be established to measure and monitor effective QRPC. Fannie Mae promotes single point of contact which supports those servicers who have or will implement single point of contact processes for the purpose of achieving contact continuity throughout the delinquency process. Contact can be via telephone, e-mail, web portal, or face-to-face.	• Quality right party contact occurs when a Servicer identifies and discusses with a borrower, coborrower, or trusted advisor, such as a housing counselor, the most appropriate options for delinquency resolution, and makes every attempt to achieve quality right party contact by: Establishing a rapport with the borrower, expressing empathy and a desire to help. Determining the reason for the delinquency and whether it is temporary or permanent. Determining whether the borrower has vacated or plans to vacate the property. Determining the borrower's current perception of his/her financial circumstances and ability to repay the debt. Setting payment expectations and educating the borrower on the availability of foreclosure alternative solutions. Obtaining a commitment from the borrower to either resolve the delinquency through traditional methods (paying the total delinquent amount) or engage in a foreclosure alternative solution. • Benchmarks measure and monitor when effective quality right party contact is achieved. • Freddie Mac encourages and fully supports Servicers who have or will implement single point of contact models for the purpose of achieving contact continuity throughout the delinquency process. • Contact can be made by telephone, e-mail, Web portal, standard mail, or face to face.	The same relationship manager is responsible for managing the borrower relationship throughout the entire delinquency or imminent default resolution process, including any home retention and non-foreclosure liquidation options, and, if the loan is subsequently referred to foreclosure, must be available to respond to borrower inquiries regarding the status of the foreclosure. No later than the effective date of this Supplemental Directive, the servicer must assign a relationship manager to a delinquent borrower or a borrower who requests consideration under imminent default immediately upon the successful establishment of Right Party Contact with the borrower and the determination that the servicer will consider the borrower for HAMP, UP or HAFA. Borrowers who are in the process of being evaluated for HAMP, UP or HAFA, who are in a Trial Period Plan or an UP forbearance plan or who have executed a HAFA Short Sale or Deed- In-Lieu Agreement as of the effective date of this Supplemental Directive must be assigned a relationship manager no later than November 1, 2011. Borrowers who were determined to be ineligible for HAMP, UP or HAFA prior to the effective date of this Supplemental Directive and who request re-evaluation after the effective date must be assigned a relationship manager if the servicer determines that there has been a significant change in the borrower's circumstances that merits a re-evaluation in accordance with existing guidance.

	FANNIE MAE	FREDDIE MAC	MHA
Call Center Benchmarks and Collection Calls	□ To the extent a servicer maintains a call center, provide uniform standards for contact method service levels, including: O Speed to answer O Abandon rate O Blockage rate O Live chats O Email responses □ Revise timelines for collection and follow up calls during the delinquency process. □ Call campaigns continue until contact is established and the delinquency is cured, a borrower response is received, or the borrower enters a workout.	• To the extent a Servicer maintains a call center, uniform standards for contact method service levels include: □ Speed to answer □ Abandon rate □ Blockage rate □ Live chats □ E-mail responses • Collection calls start between day three and 36 of delinquency and must be tailored appropriately based on the risk characteristics of the mortgage, each borrower's level of delinquency, previous payment habits, and other minimum contact requirements. Time lines for follow-up calls during the delinquency process are defined. • Call campaigns continue until quality right party contact is established, the delinquency is cured, a borrower response is received, or the borrower enters a forbearance or repayment plan.	Assessments of the single point of contact include: □ Timing of communications to borrowers about relationship manager assignment and changes; □ Relationship manager access to information, including the borrower's current status in the delinquency or imminent default resolution process, and appropriate training to understand the information; □ Relationship manager coordination of document and information flow to and from borrowers; □ Relationship manager's access to individuals with the ability to stop foreclosure proceedings when necessary to comply with MHA requirements; □ Organizational structure and staffing levels such that relationship managers can properly carry out responsibilities;
Foreclosure Prevention Solicitation	□ Provides requirements for solicitation documentation that must be sent to a borrower, and will include a uniform Borrower Assistance Form, with a hardship affidavit. □ Servicers will use this uniform Borrower Assistance Form to evaluate a borrower for all foreclosure prevention alternatives, including HAMP modifications, Non-HAMP modifications, pre-foreclosure sales, or other solutions. □ A uniform sample solicitation package will be provided for optional use.		

	FANNIE MAE	FREDDIE MAC	MHA
Delinquency Management			
Disclosures and Written Communications	There will be a uniform requirement for servicers to consistently acknowledge certain events to borrowers at specified time periods, including receipt of a Borrower Response Package. Acknowledgement will include notices to borrowers about the evaluation process and timeline, explanation of the foreclosure process, and instances where foreclosure actions may not be halted. © 2011 Fannie Mae. 4.28.2011 2 There will be uniform content and timing requirements for: O Late notices and reminder letters O Notifying borrowers of receipt of incomplete or missing information O Evaluation notices, which provide the workout decision to the borrower O Breach letters O Solicitation during the foreclosure process	• There is a uniform requirement for Servicers to consistently acknowledge certain events to borrowers at specified time periods, including receipt of a borrower's Borrower Response Package. Acknowledgment includes notices to borrowers about the evaluation process and time line, an explanation of the foreclosure process, and instances in which foreclosure actions may not be halted. • There are uniform content and timing requirements for the following: Late notices and reminder letters Incomplete information notices Evaluation notices, which provide the decision to the borrower Breach letters Solicitation during the foreclosure process • There are revised and standardized income and hardship documentation requirements for HAMP and non-HAMP modifications • We replaced our existing "involuntary inability to pay" requirements with a new requirement that a hardship must be currently causing, or expected to cause, either a long-term or permanent decrease in the borrower's income or an increase in the borrower's expenses.	The relationship manager has primary responsibility for coordinating the servicer's actions to resolve the borrower's delinquency or imminent default until all available home retention and non-foreclosure liquidation options have been exhausted and for communicating those actions to the borrower. When other servicer personnel with specialized expertise communicate with the borrower, the servicer must ensure that the relationship manager is aware of the content and outcome of those communications. The relationship manager's responsibilities include, without limitation: Communicating the options available to the borrower for resolving the delinquency or imminent default, the actions the borrower must take to be considered for those options, the timing requirements for completion of actions by the borrower and the servicer, and the status of the servicer's evaluation of the borrower for those options; Coordinating maintenance and tracking of documents provided by the borrower so that the borrower generally will not be required to resubmit the same documented information, and that the borrower is notified promptly of the need for additional information; Being knowledgeable about the borrower's situation and current status in the entire delinquency or imminent default resolution process, including any home retention or nonforeclosure liquidation options; and Coordinating with other personnel (in-house or third-party) responsible for ensuring that a borrower who is not eligible for MHA programs is considered for other available proprietary loss mitigation options.

	FANNIE MAE	FREDDIE MAC	MHA
Delinquency Timeline	□ Consistent timelines and requirements will be applied for managing delinquency for: O Property inspections O Pre-referral account review O Foreclosure referral	• Consistent requirements apply for managing a delinquency, including: □ Collection calls □ Late notices and reminder letters □ Property inspections □ Borrower solicitation □ Disclosures and written communications □ Evaluation notices □ Pre-referral and pre-foreclosure sale account review □ Foreclosure referral	
Case Escalation	□ There will be unified requirements to develop and implement a process for reviewing and responding to borrower complaints and escalating those disputes that rise to the level of an escalated case, including:	• "Escalated case" has a uniform definition. There are unified structures and requirements for developing and implementing a process for reviewing and responding to borrower complaints that rise to the level of an escalated case, including uniform:	If the servicer receives an Escalated Case (as defined in Section 3.2 of Chapter I of the Handbook), the servicer must involve the relationship manager as appropriate and necessary to resolve the Escalated Case. Following resolution, the relationship manager must have access to all documentation related to the Escalated Case.
	O Uniform timelines for review and response	□ Requirements for Servicers to develop and implement a process for reviewing borrower inquiries and complaints and escalating disputes.	Treasury does not intend for the existence of a relationship manager to alter the existing responsibilities of the servicer in managing and resolving Escalated Cases as set forth in Section 3 of Chapter I of the Handbook.
	O Uniform requirements for information to be included in the evaluation notice and other written communication with the borrower	□ Requirements that Servicer staff providing resolution on an escalated case are independent from the personnel that initially handled/processed the original borrower decision.	If the borrower notifies the relationship manager that he or she wishes to escalate a complaint or dispute an ineligibility decision, the relationship manager must assist the borrower in contacting the servicer's staff handling Escalated Cases and, upon request, must provide contact information for MHA Help, reachable through the Homeowner's HOPE™ Hotline (888-995-HOPE).
	O Uniform process for reporting escalated case activity	□ Time lines for review and response, including acknowledging to the borrower a receipt of an escalated case within three business days, and adhering to a 30-day maximum total time to resolve an escalated case. □ Requirements for information to be included in the acknowledgment of a case and other written communications with the borrower. • Escalated case activity must be reported to Freddie Mac monthly.	

	FANNIE MAE	FREDDIE MAC	MHA
Loan Modification and Foreclosure Prevention Alternatives			
Modifications	Modifications specified under this initiative are aligned with the updated Fannie Mae modification announced on April 4, 2011 in Servicing Guide Announcement SVC-2011-03 O A non-HAMP modification solution that will include a three or four-month trial period: O The modification will target loans ineligible for HAMP or have defaulted on a HAMP Trial Period Plan or permanent modification under certain circumstances.	• There will be unified structures for implementing a new non-HAMP modification solution that will include a three-month trial period: The modification will target borrowers ineligible for HAMP, or borrowers who have defaulted on a HAMP Trial Period Plan or permanent modification under certain circumstances. • This new modification, the Freddie Mac Standard Modification, will eventually replace our current mortgage modification requirements in Guide Chapter B65. We anticipate making the Standard Modification available to all Freddie Mac Servicers by early 2012.	
Documentations	Documentation A uniform Borrower Assistance Form and associated documentation will be used to solicit and evaluate borrowers for all available workout options. All borrowers must provide a signed and completed IRS Form 4506-T and required income and hardship documentation as part of their Borrower Response Package returned to the servicer. New borrower solicitation documentation will replace the current documentation used for HAMP.	• A standard Borrower Assistance Form and associated documentation will be used to solicit and evaluate borrowers for all available modifications. • All borrowers must provide a signed and completed IRS Form 4506T-EZ or Form 4506-T and required income and hardship documentation as part of the Borrower Response Package they return to their Servicer. • New borrower solicitation documentation will replace the current solicitation documentation used for HAMP.	
Benchmarks	Benchmarks will be established for: O Completed Borrower Response Packages O Foreclosure alternative pull-through rates O Quality Right Party Contact O Call Center performance		

	FANNIE MAE	FREDDIE MAC	MHA
Foreclosure Timelines			
Uniform Timelines for Referrals to Foreclosure and for Foreclosure Sales	Foreclosure timelines will cover the time from the payment due date to foreclosure referral to an attorney/trustee, and then through the date of sale.	• State foreclosure time lines cover the time from the due date of last paid installment (DDLPI) through the date of foreclosure sale.	Each servicer must develop and implement a policy that identifies experience and training requirements for the relationship manager position and the appropriate caseload levels to ensure that relationship managers can successfully fulfill the requirements of this Supplemental Directive.
	An overall maximum number of days for a foreclosure will be established for each jurisdiction that includes two components: O A state standard for an uncontested foreclosure, generally based on state laws and practices governing foreclosures O An allowance for permissible delays that are beyond the control of the servicer Foreclosure timelines will be updated.	• Foreclosure time lines are published in Exhibit 83 of the Guide.	The policy must include a provision for providing effective relationship management to borrowers whose primary language is a language other than English. The relationship manager must be supported by an organizational structure that is capable of carrying out the relationship manager's responsibilities described in this Supplemental Directive when the relationship manager is not available.
Standardized Exceptions		• There are uniform standards for allowing additional time delays due to: Bankruptcy Probate Military indulgence Contested foreclosure Loans under HAMP review or in HAMP Trial Period Plans • Specific time periods will be provided in Exhibit 83 of the Guide.	
Designated Counsel		• Servicers are responsible for time lines when a firm in our Designated Counsel Program conducts the foreclosure	

	FANNIE MAE	FREDDIE MAC	MHA
Servicer Incentives and Compensatory Fees Borrower Response Package Incentives and Compensatory Fees	We will introduce new incentives and compensatory fees for completed Borrower Response Packages. Fannie Mae will identify servicers for inclusion in the new incentive program and we will: O Track those borrowers from whom the servicer collects a completed Borrower Response Package within 6 months of the date the loan became 60 days delinquent. O Establish a minimum incentive benchmark. If a servicer exceeds this benchmark within the 6 month period the servicer will receive $500 for each completed Borrower Response Package collected O Establish a minimum compensatory fee benchmark. If a servicer does not meet this benchmark within the 6 month period the servicer will be assessed a compensatory fee of $500 for each loan that represents the difference between the Borrower Response Package collected and the packages the servicer was required to collect to meet the compensatory fee benchmark Participating servicers will not receive an incentive or be assessed a compensatory fee if the percentage for completed Borrower Response Packages for 60+ delinquent borrowers fall between the compensatory fee and incentive benchmarks.	• To encourage early intervention with borrowers, we set performance benchmarks, incentives, and compensatory fees to appropriately: Compensate eligible Servicers for meeting quality benchmarks for receipt of complete Borrower Response Packages. Assess compensatory fees for a Servicer's failure to meet defined loss-mitigation metrics and foreclosure time lines. • Looking at the population of borrowers who become 60 days delinquent as of the beginning of a month, we measure Freddie Mac Servicers at the end of a six-month period to determine how many of these borrowers: Delivers complete Borrower Response Packages, Becomes current or pays off, or Becomes less than 60 days delinquent. • We set performance benchmarks based on how many complete Borrower Response Packages you receive from the percentage of the tracked population of borrowers. A performance benchmark of 50 percent An incentive benchmark of 60 percent • We pay a $500 incentive for each complete package received if a Servicer meets or exceeds the 60 percent incentive benchmark. • We assess a $500 compensatory fee for each package not received that would have brought a Servicer to the 50 percent benchmark. • Servicers will not receive an incentive or be assessed a compensatory fee if the percentage for completed Borrower Response Packages for 60+ delinquent borrowers fall between the 50 percent and less than 60 percent benchmarks. • Freddie Mac strongly urges Servicers to work closely with HUD-approved housing counseling organizations, including paying appropriate incentives and compensation to housing counselors for their role in delivering complete Borrower Response Packages.	

	FANNIE MAE	FREDDIE MAC	MHA
Workout Incentives and Compensatory Fees	□ Under a tiered incentive structure, servicers will receive incentives for closed modifications. O Non-HAMP modifications, with amounts depending on the stage of delinquency when the Trial Period Plan starts: □ $1,600 for each closed workout for mortgages that are less than or equal to 120 days delinquent □ $1,200 for each closed workout for mortgages that are 121-210 days delinquent □ $400 for each closed workout for mortgages that are greater than 210 days delinquent □ Modification incentives will be paid provided that the modification closes within 60 days of a completed Trial Period Plan. □ Incentives will be paid out monthly provided the servicer has achieved the minimum workout pull through rates.	• When the Freddie Mac Standard Modification becomes available to all Servicers, we will pay incentives for settled Standard Modifications based on the term of delinquency when the Trial Period Plan starts: □ $1,600 for each settled Standard Modification for mortgages that are less than or equal to 120 days delinquent (less than or equal to 150 days from DDLPI) □ $1,200 for each settled Standard Modification for mortgages that are 121-210 days delinquent (151-240 days from DDLPI) □ $400 for each settled Standard Modification for mortgages that are greater than 210 days delinquent (greater than 240 days from DDLPI) • Modification incentives will be paid provided that the modification settles within 60 days of a completed Trial Period Plan. • Settled workout incentives for existing Freddie Mac workout solutions, HAMP modifications, HAFA and non-HAFA Short Sales, HAFA and non-HAFA Deeds-in-Lieu, and Repayment Plans remain unchanged. • Incentives will be paid monthly.	
Compensatory Fees for Foreclosure Timeline Violations and Missed Incentive Package Benchmarks	□ Standardized requirements will apply for determining whether compensatory fees will be assessed, and if so, calculating compensatory fees due to failure to comply with foreclosure timeline standards and missed incentive package benchmarks. □ Servicers will be subject to compensatory fee assessments for delayed foreclosure sales. □ Compensatory fees will not be issued if a servicer's aggregate amount of monthly compensatory fees is below a minimum amount.	• Standardized requirements apply for determining whether compensatory fees will be assessed for failure to comply with foreclosure time line standards. • Compensatory fees will be calculated using the following uniform calculation: Unpaid Principal Balance (UPB) x Accounting Net Yield (ANY) / 365 * Number of days over the overall allowed State foreclosure time line. The number of days over the overall allowed State foreclosure time line is the actual number of days from the DDLPI to foreclosure sale - (State foreclosure time line (DDLPI to sale) + Any allowed delay days). • Servicers are subject to compensatory fee assessments for delayed foreclosure sales conducted by designated counsel. • Netting is not allowed; foreclosure sales completed under the foreclosure time line cannot offset loans exceeding the time line. • Compensatory fees will not be issued if a Servicer's aggregate amount of monthly foreclosure time line compensatory fees is below $1,000.	

	FANNIE MAE	FREDDIE MAC	MHA
Entity Implementation			
Requirements	We are finalizing our requirements, which we will provide to all servicers in one or more Guide Announcement(s) in the coming months.		
Systems and Operational Changes	We are finalizing our necessary systems and operational changes, including any necessary changes to our servicing technology tools and investor reporting processes. We will communicate systems and operational changes as part of our full requirements rollout.	• We are finalizing our necessary systems and operational changes, including any necessary changes to our servicing technology tools and investor reporting processes.	
Effective Dates	Through this summer, we will determine aggressive yet realistic effective dates, and where © 2011 Fannie Mae. 4.28.2011 5 possible, institute a phased set of effective dates to ensure efficient implementation by all servicers.	• Freddie Mac Servicers are required to meet new servicing requirements for borrower contact, delinquency management, foreclosure time lines, and incentives and compensatory fees by October 1, 2011. New forms are available on FreddieMac.com and Servicers are encouraged to begin using the new solicitation documents as soon as they are operationally able to, but no later than necessary for evaluations to be conducted on or after October 1, 2011. • Revised state foreclosure time lines and compensatory fees measurements are in effect for mortgages referred to foreclosure on or after October 1, 2011.	
Support	We will provide a robust set of training resources to assist servicers in implementing new requirements.	• Training, including a Bulletin overview webinar that offers a comprehensive overview of Guide Bulletin 2011-11, is available on The Learning Center at www.freddiemac.com/learn/service/alignment_initiative.html. • New solicitation documents and forms are available at www.freddiemac.com/singlefamily/service/solicitation_docs.html	

PREPARED STATEMENT OF ROBERT M. COUCH

COUNSEL, BRADLEY ARANT BOULT CUMMINGS, LLP

AUGUST 2, 2011

Chairman Johnson, Ranking Member Shelby, and Members of the Committee: My name is Rob Couch, and I am attorney with Bradley Arant Boult Cummings, a law firm based in Birmingham, Alabama. Prior to joining the firm, I served as General Counsel of the United States Department of Housing and Urban Development from June 2007 to November 2008 and Acting General Counsel from December 2006 to June 2007. Before joining HUD, I served as president of the Government National Mortgage Association (Ginnie Mae). Prior to my Government service, I was the CEO of New South Federal Savings Bank, then the largest thrift in Alabama and one of the most active residential mortgage lenders in the South. I have also served as Chairman of the Mortgage Bankers Association of America and as President of the Alabama Mortgage Bankers Association. Thank you for inviting me to testify today about the ongoing debate regarding national mortgage servicing standards.

Despite my years of involvement within the mortgage and financial services industries, perhaps the most profound lesson about mortgage banking that I ever learned occurred when I signed a mortgage of my own several years ago. It was about 15 pages long. Right before I signed it, the closing agent looked at me and said, "Do you know what this document means, Rob?" "I think so," I replied. His response will remain with me forever: "If you pay, you stay. If you don't, you won't." While this summation may seem unduly harsh to some, it provides the essence of the subject of this hearing.

We are all painfully aware of the deficiencies in the mortgage process that came to light in the throes of the recent financial crisis. I believe that we are all in agreement about the need to go forward addressing these issues and focusing on the actual harm that they caused. We, of course, must also balance everything against the long-term impact that the unintended consequences of our actions will have on homeowners and the housing market. It is my hope that my testimony will illuminate the important issues of market certainty and fundamental fairness in a way that will encourage this Committee and the Congress to consider these principles and take a balanced approach as it proceeds with its important efforts.

Although there are multiple proposals to make changes to mortgage servicing standards, I think that it is important to recognize that historically, the process has worked just as it was supposed to. In the debate over how to prevent mistakes in the future, there is a tendency to overlook the basics. At the risk of oversimplifying, it is worth a couple of minutes to review how the system is supposed to work.

When an individual decides to borrow money to buy or refinance a home, she provides information to the bank that has the money and the bank makes the decision to lend based on the likelihood that the borrower will repay the money along with a fair market interest rate. At closing, the borrower receives the money and signs a note promising to pay the money back along with interest. She also signs a mortgage stating that, as collateral for the loan, the home itself is subject to being foreclosed upon if the borrower goes into default. This process provides certainty to both the borrower and the lender, which is vital to the markets. The borrower's promise to pay and the document that lays out the security is then saleable to investors. These investments have historically been attractive to pension plan managers and other long-term investors because pension plan participants and other beneficiaries of investments in mortgages have long-term horizons and 30-year mortgages provide just that.

While the intention behind setting national mortgage servicing standards is certainly laudable, such standards create unintended consequences that Congress should consider through the lens of certainty and fairness.

I. Certainity

Much of the recent criticism of the mortgage industry is warranted. Recently, we have witnessed sloppiness and abuse of process by some lenders and servicers. Borrowers who have actually been harmed by any malfeasance should unquestionably be fully compensated as required by law. While national mortgage servicing standards may well address these mistakes, they can also potentially cause uncertainty to creep into the markets and devastate investment, which will ultimately be felt by homeowners. Efforts to slow down foreclosures have created a huge backlog that has become known as the "foreclosure overhang." This backlog has further depressed real estate markets that are still reeling from the recent recession.

Today, over 90 percent of all new mortgages have direct guarantees from the Federal Government. Such direct involvement is necessary to overcome the markets' uncertainty of investment in mortgages. Ongoing, heavy Government involvement, however, is not sustainable over the long run. For private capital to return, certainty must exist.

To illustrate my point, over the past 3 years, only two private label securities, backed by mortgages, have come to market. They were worth approximately $500 million.[1] In 2006, by comparison, multiple private label securities worth over $700 billion were issued backed by mortgages.[2] The lack of private money in the marketplace is in a large part due to uncertainty and any national mortgage servicing standards must take that uncertainty into consideration and sufficiently address it.

Much of this uncertainty in the market is attributable to uncertainty in the foreclosure arena, the execution of the second half of my closing agent's simple principle: "if you don't, you won't." Investors, many of whom are retirees, watch the value of their mortgage-backed investments fall as well-intended efforts to be compassionate to struggling borrowers proliferate. These efforts take many forms, including loan modifications extending or reducing interest rates on loans, reduction of the principal amount owed, or indefinite postponement of foreclosure rights. All of these proposals may change the terms of the contract the investor purchased and contribute to the uncertainty surrounding the mortgage marketplace.

II. Fairness

The national average of the amount of time between delinquency and foreclosure is 400 days.[3] Put another way, on average, a person who cannot or will not pay their home mortgage stays in his or her home rent-free for an average of 400 days before possession of the home is transferred to the owner of the debt. In some States, this figure is much higher. In New York and New Jersey, it is taking an average of 900 days—almost two-and-a-half years—to move a loan from default to foreclosure. In Florida, the average foreclosure time line is about 680 days.[4] Many of the provisions under debate in negotiations on nationwide standards, such as principal write-downs, are well-intended efforts to provide relief to borrowers who do not pay. Any national mortgage servicing standards, however, must also address the marketplace and equally important, the people who do pay.

The vast majority of people being foreclosed upon are not legally damaged or suffering demonstrated harm. As an aside, this fact demonstrates one of the major flaws with the proposed settlement by State attorneys general as reported in the press because they propose to collect money from servicers without basing the collection on demonstrated harm.[5] Individuals who have been harmed during the foreclosure process already have avenues to pursue their legal rights and obtain damages due to them. Fact-based determinations in a court of law, however, are far better and ultimately provide more protection than simply requiring servicers to contribute money to a fund.

Most of the servicing standard proposals, however, do not consider the majority of hardworking Americans who do pay their mortgages every month. National servicing standards that do not address the marketplace or the people who are not in default subject those people to the "foreclosure overhang." Requiring lenders to reduce mortgage balances increases costs that will ultimately be borne by all borrowers. Mortgage write-downs also remove incentives for banks to lend money and for investors to purchase mortgages, denying people access to credit needed to purchase or refinance homes and negatively impacting an already devastated housing market. In sum, an efficient foreclosure process is necessary to clear local markets, facilitate economic recovery, and protect the borrowers who are not in default.

III. Adequacy of State Law

Finally, Congress should be mindful that policies and procedures relating to the foreclosure process historically have resided within the province of State laws dealing with foreclosure processes and consumer protection. Each State has adopted procedures spelling out how the foreclosure process should be conducted and what protections should be afforded to borrowers. These procedures have worked very well for many years. Federal and State regulators should be slow to override State law sovereignty by effectively making mortgage servicers subject to new rules without a legislative mandate. Moreover, in most cases, remedies under State laws, regulations and requirements already exist for a majority of the perceived problems within

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[1] Mark Fogarty, "Trouble Ahead", *National Mortgage News*, Mar. 10, 2011.

[2] The Board of Governors of the Federal Reserve System, Report to Congress on Risk Retention, Oct. 2010.

[3] Jon Prior, "Delays Push Foreclosures to 40-Month Low in April", *Housing Wire,* May 11, 2011.

[4] *Id.*

[5] Kerri Panchuk, "Congress Wants CFPB To Come Clean on Mortgage Servicing Settlement", *Housing Wire,* Jul. 14, 2011.

the mortgage industry and any national servicing standard should consider the existence and adequacy of existing rules so that borrowers who suffer actual harm may avail themselves of compensation already afforded by State law.

Thank you again for holding this important hearing and for sharing everyone's commitment to certainty and fairness as we continue to pave the road to our Nation's economic recovery together. I urge you to be deliberate and balanced in your approach to these important issues and be mindful of the unintended consequences of your actions. I look forward to answering your questions.

PREPARED STATEMENT OF PETER P. SWIRE

C. WILLIAM O'NEILL PROFESSOR OF LAW, MORITZ COLLEGE OF LAW OF THE OHIO STATE UNIVERSITY

AUGUST 2, 2011

Chairman Johnson, Ranking Member Shelby, and other distinguished Members of the Committee, thank you for inviting me to participate in this hearing on national mortgage servicing standards. As staff is aware, I had previously committed to speak at an event in Oregon today, and I thank the Committee and its staff for the extraordinary flexibility of having me testify online today, over Skype. In addition to my work on housing and finance issues, my other main area of research is in technology and the Internet. I believe that using online technologies in this way can help open up Congress and our political process to effective participation by an ever-greater portion of the American people.

My testimony today will draw on two previously published items, which are attached to the testimony. The first is a report called "What the Fair Credit Reporting Act Should Teach Us About Mortgage Servicing," which was published by the Center for American Progress in January, 2011.[1] The second is an article in the *Los Angeles Times* from March 6, 2011, which described some of my personal experiences as a homeowner with the mortgage servicing industry.[2] In 2006 and 2007 my servicer, Washington Mutual, repeatedly purchased duplicate flood insurance for my house in Bethesda. After dozens of calls, and the erroneous imposition of numerous late fees, I was eventually able to resolve this problem with WaMu without paying such fees. I have also attached a time line of the dispute that I sent to WaMu in 2007.

Background of the Witness

I am now C. William O'Neill Professor of Law at the Moritz College of Law of the Ohio State University, and Senior Fellow at the Center for American Progress. From July, 2009 through August, 2010 I served as Special Assistant to the President for Economic Policy, serving under Lawrence Summers in the National Economic Council. At the NEC, my biggest task was to coordinate the interagency process for housing and housing finance issues. In this role, I worked extensively on mortgage servicing issues, including the Home Affordable Mortgage Program (HAMP), and servicing and other issues affecting the Federal Housing Administration, Government sponsored enterprises (GSEs), and possible reform of the GSEs. In this role, I met on a number of occasions with mortgage servicing executives, as well as a wide variety of other stakeholders concerned about the mortgage servicing process.

Before and after my NEC service, I have worked on a range of other policy issues. My work is likely best known in the privacy area. I served as Chief Counselor for Privacy in the Office of Management and Budget under President Clinton, and I testified on the Fair Credit Reporting Act before the Housing Financial Services Committee in 2003.

What the Fair Credit Reporting Act Should Teach Us About Mortgage Servicing

My report on the Fair Credit Reporting Act (FCRA) makes a simple point. The sorts of market failures that led to the creation of the FCRA in 1970 also exist for mortgage servicers. The single most important fact is that the consumers—the homeowners—are not the clients. The clients for the credit reporting agencies are the companies that pay for the credit reports, such as lenders or employers. The clients for the mortgage servicers are the companies that invest in mortgages. Mort-

[1] *http://www.americanprogress.org/issues/2011/01/fcra__mortgage__servicing.html*

[2] Lew Sichelman, "Mortgage Servicing Errors Highlight Need for Change", *L.A. Times*, March 6, 2011, available at *http://articles.latimes.com/2011/mar/06/business/la-fi-lew-20110306.*

gage servicers owe their legal duties and market loyalties to the investors, not the homeowners.

This testimony will not repeat the report's discussion of the history of mortgage servicing and all of the policy analysis. Instead, it is important to understand that consumers have no market or legal checks on the servicers. The homeowner doesn't choose the servicer—that choice is made by the company originating the loan or by a subsequent owner of the mortgage. If the homeowner has a bad experience with the servicer—as so many consumers have—the homeowner can't even quit. Even if the homeowner refinances the loan, concentration in the servicing market means the homeowner quite possibly will get the same servicer the next time.

Homeowners not only lack any market choice, but they currently lack legal remedies if the servicer performs badly. That is the reason that national standards for mortgage servicing are so important. Where there are no market forces to protect consumers, then something else must fill the gap. An effective set of consumer rights could be embodied in national mortgage servicing standards. I hope that that will happen.

Dispute on My Mortgage With Washington Mutual's Servicing Arm in 2006–2007

To prepare for this testimony, I have reviewed the files from my dispute with Washington Mutual in 2006 and 2007 about flood insurance on my family's home on a hill in Bethesda. This dispute was the subject of the *Los Angeles Times* article by Mr. Sichelman in March.

I am sorry to report that I stated some details incorrectly to Mr. Sichelman when I did the interview with him for the story. The interview began as a discussion about the FCRA and mortgage servicing policy, and so I did not review the file before speaking with him. Specifically, my family did have flood insurance on the house from the time we bought it in 2002. The house is within a couple of hundred yards of the top of a large hill in Bethesda, it has never flooded to my knowledge since it was built in the 1960s, and I personally did not believe it needed flood insurance. Upon review of the file, however, I learned that we had prudently kept flood insurance in effect from the time we bought the house and throughout the dispute with WaMu.

I provide that detail because the file vividly shows the cascade of mistakes that the servicing company made, despite several dozen calls by me to the company and detailed documentation. The basic problem, beginning in early 2006, was that WaMu bought "force placed insurance"—duplicate flood insurance on my house despite the fact that State Farm repeatedly sent them proof of coverage. In numerous instances, WaMu would impose a "late fee" on my family. We had automatic payment each month for our mortgage payment, and so we were never late on any payment. The WaMu practice, however, was to charge us for flood insurance without telling us, and then declare us "late" for the entire monthly mortgage payment. The next month would also be "late," and subject to additional fees, because of the second month's duplicate flood insurance fee.

In May, 2007, I informed WaMu that I would contact regulators and the Congress if they did not resolve the problem. My letter to WaMu said:

> The amount of time it is taking for me to resolve this matter resembles a major piece of litigation. I feel very sorry for the other customers who get caught in this cycle of uninformed debt collectors, automatic threatening letters of no insurance, lost faxes by WaMu, an apparent policy of ignoring many proofs of insurance coverage, systems that suppress notes saying a customer will not be subject to collection calls and late fees, large late fees due to no fault of the customer, and so on.

This letter led to a phone response that made me believe that the problem was resolved. Soon, however, the problems began again, and it was not until October, 2007, that the matter was finally resolved.

In conclusion, I have taught both banking law and consumer protection, and I feel fortunate that I could advocate for myself and avoid the thousands of dollars of fees that the servicer erroneously sought to impose on my family. Most homeowners, however, are not banking law professors. Before the financial crisis of 2008, my experience with WaMu sensitized me to the flaws in our current mortgage servicing system. My experience in Government and since has taught me there are numerous hard-working and talented individuals in the mortgage servicing industry. The incentives, however, do not work for consumers. In the absence of market discipline on servicers, an effective national set of mortgage standards is essential.

I thank the Committee for its attention to these important matters, and I welcome any questions you may have.

FAX Cover Sheet

TO: Ms Ingrid Boykin, Supervisor, Flood Insurance
Via fax to 843.413.7121

FROM: Peter Swire, phone 240.994.4142, fax 301.365.1137, email peter@peterswire.net

RE: 2006-2007 Proof of coverage for WaMu loan number 5302625842

DATE: May 18, 2007

Total pages: 3

Ms. Boykin: Attached is the State Farm proof of coverage for flood insurance for March 2006 to March 2007. As you will see, there was never a gap in coverage from State Farm.

The amount in 2006 was for the same amount we had had in previous years: 120,000 on the dwelling. In March 2006 State Farm specifically told me that they faxed this to WaMu. We understood that it was all set, and never received a communication from WaMu that the coverage was too low and so we never raised the coverage until I was told that was needed in 2007.

Thank you for arranging for the refund for our duplicate flood insurance paid for by WaMu for March 2006 to March 2007. If you have any questions/comments, please call me at 240.994.4142.

Best regards,

Peter Swire

8520 Howell Road
Bethesda MD 20817
May 4, 2007

Ms. Ingrid Boykin
Supervisor, Flood Insurance
Washington Mutual
Via fax to 843.413.7121

Re: Duplicate Flood Insurance for WaMu Loan Number 5302625842

Dear Ms. Boykin:

The simple fact is that my family has had uninterrupted flood insurance from State Farm on our house since we purchased it in 2002. We have sent proof repeatedly to WaMu of this fact. Nonetheless, we are currently out-of-pocket thousands of dollars to WaMu for duplicate flood insurance.

I am frustrated by the fact that WaMu has charged us thousands of dollars incorrectly, and has required me to engage in months of phone calls and documentation of this case. As a citizen, I am more worried by the fact that I have been utterly unable to resolve this problem, and have continued to receive collection calls from WaMu, most recently yesterday. I am a banking law professor, and an expert in consumer protection law. I have testified before the Senate and House Financial Services as an expert, and was the lead White House representative for drafting the Gramm-Leach-Bliley privacy rules. The big problem is this – if I cannot resolve this sort of problem, then a great many ordinary consumers are undoubtedly finding it impossible to resolve their problems as well. I am concerned that there is a unfair pattern or practice at WaMu that is designed to cost consumers large amounts of money for duplicate flood insurance.

For this reason, I am attaching DRAFT letters to people I know well, who work for the Chairmen of the Senate and House Financial Services Committees, as well as a draft letter to your regulator, the Office of Thrift Supervision. I am making a simple offer to conclude all charges from WaMu concerning my flood insurance – confirm, in writing, that all expenses related to purchase of flood insurance be cleared up from my account in one week, by May 11, or I will put the letters into final and send them to the Congress and the OTS. As part of the settling-up of the matter, we will mutually determine the correct monthly amount for my family to pay going forward, and my family will immediately ensure that that amount is paid each month. If WaMu clears this up by May 11 and lives up its word, then I will promise not to go the Congress, the regulators, or the press on this matter.

Attached you will find a document containing a detailed timeline of my interactions with WaMu on this issue. The document also contains a list of six distinct system problems, incorrect fees, and incorrect premiums that we need to resolve.

I am sorry to take so formal an approach to this matter. The amount of time it is taking for me to resolve this matter resembles a major piece of litigation. I feel very sorry for the other customers who get caught in this cycle of uninformed debt collectors, automatic threatening letters of no insurance, lost faxes by WaMu, an apparent policy of ignoring many proofs of insurance coverage, systems that suppress notes saying a customer will not be subject to collection calls and late fees, large late fees due to no fault of the customer, and so on.

My phone is 240.994.4142, fax at 301.365.1137. Email to peter@peterswire.net. My web site is at www.peterswire.net, in the event that you, your counsel, or your supervisors want to confirm my background and ability to follow through on my contacts with Congress and the press should this not be resolved promptly.

Sincerely,

Peter Swire

Fact sheet on Problems of Peter Swire with Washington Mutual for Duplicate Flood Insurance Coverage, Washington Mutual loan number 5302625842.

Timeline of Duplicate Purchase of Flood Insurance:

This timeline shows the main points of contact concerning the purchase of duplicate flood insurance for our house. The actual number of customer service calls is considerably higher than shown, because I did not keep comprehensive notes and because I had to start calls a number of times during the work day but did not get through to customer service or had to terminate the call because my available time during the work day was limited.

2002. Anne and Peter Swire buy the house at 8520 Howell Road, Bethesda MD. Our county says that our house requires flood insurance (even though the house is over 45 years old and has never had any flood problem). We therefore get flood insurance from State Farm in the amount recommended by the lender, and have maintained flood insurance continuously ever since.

January - March 2006: For the first time, we receive letters from WaMu saying that we need to send evidence of flood insurance. I don't have records of the dates of my calls to WaMu customer service, but I asked what needed to be sent. I then contacted my State Farm agent, Nancy Goldberg, to explain the need to prove coverage. I confirmed with Nancy that she faxed the proof of coverage. The WaMu letters stopped and I believed that WaMu had received the fax and known not to buy duplicate coverage.

During a phone call with WaMu customer service in 2007, I was told that faxes were only accepted if they had the WaMu loan number on them. I asked if a proof of coverage fax would go into my file if it did not contain the WaMu loan number, and the customer service person said it likely would not. I know that State Farm faxed proof of coverage in early 2006. I therefore have come to the conclusion that WaMu ignored the proof of coverage State Farm sent in 2006, even though the documentation had my name and address and came from a major insurance carrier. Neither State Farm nor I learned that the fax had been refused due to lack of an account number, despite the phone number and fax number being on the fax cover sheet. I learned in 2007 that WaMu has charged us $2398 for this duplicate coverage for March 2006-2007. I believe it is incorrect for WaMu to keep this $2398 when we timely sent proof of coverage by State Farm.

December, 2006-May, 2007. We have received many collection calls from WaMu, despite the fact that we have paid our mortgage automatically in the first week of each month. In December, January, and February, we received a collections call from WAMU in each month, roughly in the middle of each month. In each instance I asked the date of last payment, and they said it was on time at the beginning of that month and therefore no late fee was appropriate. By the February call, the representative in the flood insurance office specifically agreed to put in the file that there should be no further collections calls and no late fees – we were working in good faith to determine the correct amount for my monthly payment. Then, in March, collections called again. I asked if the notes were in the file. The representative said that the file said "no calls" and "no fees," but they had called anyways. On May 3 I received a collections call from an agent identified as "Hazel." This call appeared to be about the April mortgage payment. I asked Hazel whether the notes said "no calls" and "no fees." She said they did not. Faced with this new evidence of system problems at WaMu, I decided to write up in detail the history of this dispute.

I am unable to determine whether WaMu has currently charged me any late fees in connection with how the duplicate flood insurance has affected my monthly payment. I dispute any such fees, because we have continuously had flood insurance and have made timely mortgage payments in the first week of each month.

January 2, 2007. I called WaMu customer service. They told me that I had sent the "old" amount for the mortgage/escrow. Their system had seen an incorrect payment and so had put it on "hold." Their system thus treated us as one month behind in payment, and applied a late charge (I think of $179.51).

They also told me my monthly escrow amount had changed due to their purchase of flood insurance. This was the first time I learned that WaMu had not accepted our proof of coverage from early 2006. I think it was at this time that I learned that WaMu would only process proof of coverage if the WaMu account number was on the document. I contacted State Farm, and they faxed proof of flood insurance coverage to WaMu.

At the end of the customer service call, the representative said that we would have no late charges. (We had timely paid the monthly mortgage, and we were working to resolve the flood insurance issue.) I mistakenly thought the problem had been resolved.

Approximately January 15, 2007. I received one or more collection calls, but explained that we had sent proof of coverage and so the issue had been resolved.

(My recollection is that State Farm faxed it one time but it did not register in the WaMu system. I then called customer service, learned about the need to have the loan number on the fax, and State Farm faxed it a second time. My written notes do not give details of this, but WaMu's customer service records likely show one or more additional calls.)

January 22, 2007. A letter dated this day says "Since you have obtained sufficient flood insurance, please be advised that the flood coverage we previously purchased on your behalf has been cancelled effective 01/03/07. You will only be charged premiums for actual time that the coverage that we ordered was in effect and any unearned premiums will be refunded back into your escrow account."

February, 2007. I received another collection call. I was told the collection office could do nothing to stop collection calls and I had to call the flood insurance office. I called the flood insurance office. I learned for the first time that WaMu considered our coverage from State Farm to be too low. Our coverage was the same as at the original mortgage closing, at $120,000. I therefore instructed State Farm to increase the coverage.

March 2, 2007. State Farm once again faxed proof of insurance coverage to WaMu.

March 13, 2007. I called WaMu customer service and spoke with Ms. Christina McDurko, phone 877.893.5667. Much of our conversation was trying to determine what the correct monthly mortgage amount was due from us. My wife and I have automatic mortgage payment from our bank to WaMu in the first week of the month, but the precise amount due depends on the amount of flood insurance WaMu has been charging for flood insurance. For instance, my notes show that we paid $4554.15 at the beginning of March, and the shortage due to the problem of flood insurance was $114.09.

Because we have made timely payments every month on the mortgage, and because we were working in good faith to resolve the flood insurance matter, Ms. McDurko specifically said that we would have "no late fees" for the previous months where collectors had already called us. My understanding was that she was putting this in the notes part of our customer file, and that the "no late fees" would continue so long as we made timely payments at the beginning of each month and were moving forward to resolve the flood insurance issue so that we would know the precise amount to pay each month in the future.

March 15, 2007. I called WaMu customer service, and spoke with Ms. LaKeisha Williams. She confirmed that she had received the fax on March 5 proving State Farm coverage for 2007-2008. She confirmed that WaMu had not bought excess coverage for 2007-2008.

Specifically, Ms. Williams said that the amount that WaMu had charged me for 2007-2008 was $2475. Because I had given proof of coverage, Ms. Williams said this amount had been credited to my escrow account.

April 2, 2007. Much to my surprise, I received another letter saying that I had no flood insurance coverage for 2007-2008. In my next attempt to resolve this matter, I called customer service and asked to speak to a supervisor. I spoke with Ms. Ingrid Boykin, phone 866.310.4237 x63623, fax 843.413.7121. She told me that WaMu had gone ahead and bought (duplicate) flood insurance coverage on March 17. This was two days after the March 15 call, when I was told that I would receive a refund because proof of coverage was in place.

Ms. Boykin told me that the notice of this purchase was mailed to me on March 28, and that was why I received the notice in early April that the duplicate coverage had been purchased.

April 6, 2007. A letter dated this day came from WaMu. It was another "We are a debt collector" letter that showed no acknowledgement of all my previous conversations with WaMu. This letter is an example of what seems to be automatic generation of letters in one part of WaMu's system, with no linking to what is actually happening with the customer account and customer service department.

The letter says: "You may be able to obtain a refund of unearned premium; however, you will be charged for any time period where your coverage lapsed." Since we have had continuous coverage by State Farm, there was never a lapse in coverage.

April 18, 2007. A letter dated this day came from WaMu. It said that we have now proved we have sufficient flood coverage. "The flood coverage we previously purchased on your behalf has been cancelled effective 05/06/07. You will only be charged premiums for the actual time that the coverage that we ordered was in effect and any unearned premium will be refunded back into your escrow account." This letter means that I was charged premiums (and perhaps fees) from approximately 3/10/07 to 5/6/07.

Summary of systems problems at WaMu, incorrect premiums, incorrect fees, etc.:

1. In early 2006, State Farm faxed proof of coverage to WaMu. (I triple-checked this at the time due to the number of letters and calls from WaMu.) WaMu ignored the proof of coverage, and charged us $2398. The WaMu decision not to accept the fax (and not to call us back) appears to be pursuant to a policy of not accepting documentation that lacks the WaMu loan number, even when name, phone number, and address are apparent on the face of the document. That amount has still not been refunded to us.

2. In December, 2006 WaMu counted us as one month late in payment because the amount we automatically paid did not exactly match the amount it had altered as due, apparently due to purchase of flood insurance. There was a fee for late payment, and WaMu representatives later said the fee would be waived. I do not know if this fee has been refunded.

3. WaMu sent us a letter on January 22, 2007 saying it had confirmed we had flood coverage in place. I do not believe there has ever been a refund to us (or to our escrow account) based on this acknowledgement of coverage.

4. On March 13, Ms. Darko said that she was putting "no calls" and "no late fees" into the notes part of my file. Despite this, we were called by the collections department in March and on May 3. On the first occasion the agent acknowledged that the notes section said "no calls" and the call ended. On May 3, the agent said there were no notes in the file saying "no calls" or "no fees." I don't know if this agent was mistaken, or if for some reason the file was altered to delete the "no calls" and "no fees" entries.

5. On March 15, Ms. Williams confirmed that State Farm had supplied satisfactory proof of coverage. She said that a refund of $2475 had been credited to my escrow account. Then, WaMu went ahead and purchased a full year's flood insurance on March 17, and didn't let me know until a letter arrived at my house on April 2. Buying this flood insurance two days after confirming the issue was settled, without calling me, is perhaps the single biggest sign of WaMu's disregard for simple courtesy and basic customer service.

6. The WaMu letter of April 18 says that it will charge us for premiums for (duplicate) coverage for 3/10/07 to 5/6/07. I don't know the amount, but this charge is directly contrary to what Ms. Williams said to me on the phone on March 15.

Center for American Progress

What the Fair Credit Reporting Act Should Teach Us About Mortgage Servicing

Progressive Recommendations to Protect Home Mortgage Consumers

Peter Swire January 2011

Introduction

Our nation's recent housing crisis revealed deep flaws in the way monthly mortgage payments by homeowners are handled by mortgage servicers—the companies that collect monthly mortgage payments from homeowners and forward the payments to investors in those mortgages. These flaws go far beyond the recent and headline-grabbing robo-signing scandals, in which many mortgage servicing companies were found complicit in shoddy handling of the legal requirements for foreclosure. Other major players in the housing market are deeply dissatisfied with the current system, including private investors in mortgages that have been bundled into mortgage-backed securities, mortgage insurance companies, and the two big mortgage finance giants that are now in government conservatorship, Fannie Mae and Freddie Mac.

So, too, are the consumers of home mortgages—the more than 50 million homeowners who write monthly mortgage checks to mortgage servicing companies. This issue brief presents a new analysis of how consumers are systematically disadvantaged by the current system of mortgage servicing, in which mortgage servicing rights are governed legally to protect the interests of investors and mortgage servicers before the rights of consumers are ever considered.

As the mortgage servicing industry evolved in the past decade, a major market failure developed—they owe their responsibility only to investors, and owe no duty at all to consider the needs and interests of consumers. Amid the housing crisis that began in 2006 and metastasized over the next four years, it became increasingly clear this type of market failure precisely tracks the problems that led to creation of the Fair Credit Reporting Act in 1970—harms to consumers when the large financial companies responsible for consumers' credit ratings served the interests of their major corporate clients rather than consumers. That market failure four decades ago was corrected by FCRA, which requires the three big credit rating agencies—Equifax, Experian, and TransUnion—to give individuals the right to see their credit history and to correct mistakes. Over time, Congress strengthened these consumer protections under FCRA, notably in overhauls in 1996 and 2004.

That same market failure corrected by FCRA in consumer finance is now readily apparent in the mortgage servicing marketplace. After all, some of the biggest consumer issues in a family's life—whether they can stay in their home, on what terms, and paying how much in fees—is a realm of finance over which consumers boast little to no leverage. What's more, mortgage servicing rights are not specifically addressed in the financial regulatory reform law passed by Congress last year.

The upshot: An effective set of consumer protection rules should be a priority of financial regulators, the new 112th Congress, and the Obama administration in the response not just to the robo-signing scandals but also the creation of our next generation of housing finance as Congress and the administration grapple with how to replace the mortgage finance roles played by Fannie Mae and Freddie Mac. This issue brief offers some progressive recommendations for how this could be done to the benefit of consumers and our mortgage finance system.

From robo-signing to investor concerns

A series of congressional hearings late last year regarding the "robo-signing" scandal raised the question of what to do about mortgage servicing rights. The robo-signing scandal involved employees of major servicing companies who admitted that they routinely, falsely signed documents under oath in court cases. Once Congress and the press began to look under the hood of servicing practices, other serious problems emerged, including the question in many cases about whether servicers followed the requirements for endorsing the "notes" (proof of ownership of a loan) as required before a foreclosure can legally occur.

The robo-signing hearings brought new attention to longstanding complaints about mortgage servicers. The Obama administration's Home Affordable Mortgage Program, or HAMP, a mortgage-modification program for embattled but creditworthy homeowners, has been plagued by slow action by servicers. For instance, Bank of America Corp. did not complete a single permanent mortgage modification by the end of 2009, and the attorneys general in two states brought a new lawsuit against Bank of America in December for numerous alleged unfair or deceptive practices.[1] There have been numerous complaints about lost documents, slow service, and servicer mistakes about putting houses into a foreclosure sale while a different part of the same servicer was agreeing to a mortgage modification.

On the financial side, mortgage servicers are being hit by enormous claims for damages from a range of actors. Fannie Mae and Freddie Mac are seeking billions of dollars of "putbacks," or payment back to them for mortgage origination and servicing during the housing bubble that violated the legal requirements of the two then-government-sponsored enterprises, both of which are now effectively government owned. Those putback demands are based on the documented fraud and abuse committed by many mortgage originators and servicers during the bubble as they sought to create more and more mortgage-backed securities for sale to eager institutional investors worldwide. Major lawsuits by private mortgage insurance companies similarly claim that they paid billions of dollars in insurance claims to investors in these mortgages for loans that were not properly originated and serviced.

Some of the sharpest complaints have come from investors in so-called "private-label securities," the mortgage bonds created on Wall Street during the bubble without any payment guarantees from Fannie Mae or Freddie Mac. These private-label securities were issued and sold separately from the so-called "conforming" mortgage-backed securities that Fannie Mae and Freddie Mac guaranteed. Investors in private-label securities essentially claim that servicers have not been faithful agents for investors; servicers are supposed to act on behalf of the investors under the contracts that hired them.

Among other concerns, investors worry that servicers have been making judgment calls to the advantage of the servicers themselves rather than the investors the contracts say they are supposed to work for. Other affiliates of the major servicers, for instance, hold the bulk of the home equity lines of credit and other junior mortgage claims. This means they are incentivized to maximize value of these second-lien mortgages over the first-lien mortgages. The concern is that servicers often make modifications and other decisions in ways that benefit the supposedly 'second-in-line" lenders (the servicers) in front of the "first-in-line" investors.

In the wake of the historic housing bubble, it is entirely predictable that major players in housing finance are now pointing the finger of blame at each other, and suing each other over who should suffer the unprecedented losses caused by housing price declines. The robo-signing scandal and recent hearings in Congress, however, provide a teachable moment about the need for fundamental reform in how mortgage servicing rights are treated in the American housing market. Indeed, in a recent hearing, Sheila Bair, chairman of the Federal Deposit Insurance Corporation, called for "broad based reform of mortgage servicing" to address 'misaligned incentives." The same day, Daniel Tarullo, governor of the Federal Reserve Board, called for "new national standards for servicers."

We may be seeing the beginning of agreement around a simple but crucial point: The next generation of mortgage finance in this country requires major reform in the way that homeowners pay their monthly mortgages. Fannie and Freddie, the Federal Housing Administration, private mortgage insurers, and private investors all have expressed severe concerns about bad incentives in the current system. To assure liquidity for our future housing market, we need better ways for investors and guarantors to be confident that servicing is being conducted with the correct incentives. And all this can be done while also protecting the rights of consumers of home loans—all 50 million of them.

The switch to a new mortgage servicing market

As reform proposals are developed for investors in home mortgages and guarantors of those loans, it is critical to reform the system so that it works better for another group—the homeowners of America. More than 50 million American families pay their mortgage each month. Until quite recently, few of them were harmed by bad servicing. Today, in contrast, the modern shape of the servicing industry means that families are open to harm from servicers, with essentially no control by legal remedies or market discipline.

This harm to homeowners is a recent phenomenon. Historically, most mortgage loans were made locally by thrifts or commercial banks. Even if the loans were later sold, the lender often handled the monthly mortgage payments, which meant that the lender had the usual market incentives to treat borrowers well because the local lender hoped to provide other banking services to the family, such as a deposit account or a new mortgage loan in the future.

Over time, this local lending and servicing gave way to servicing by specialized third parties, especially after creation of those private-label securities on Wall Street in the late 1980s. By the late 1990s and early 2000s, the economics of the servicing market led to two trends. First, a much larger proportion of local lenders sold off the mortgage servicing rights rather than keeping them in-house. Second, market concentration in the servicing industry skyrocketed. The 10 largest servicers had an 11 percent market share in 1989, climbing to 40 percent a decade later, according to the Handbook of Mortgage-Backed Securities. Today, the top four servicers have more than 70 percent of the market. As a result, the policies of a small number of financial giants now govern how most homeowners are treated if there is any difficulty in paying the mortgage.

The steady rise of housing prices until recently masked the effects on consumers of the new market structure for mortgage servicing rights. When home prices are rising, there is an easy way out for homeowners who lose a job or otherwise face problems in paying the mortgage—just sell the home for a profit. As long as house prices stay even or go up in the meanwhile, the family can pay back the mortgage and move to a rental unit. Things were even easier during the easy-credit days of the housing bubble. If a family started to fall behind on the first mortgage, rising housing prices meant that the family could "tap their equity" in the home and get a second mortgage to keep current with the first mortgage payments. Or, during the same easy-credit period, many families could put the monthly mortgage on their credit cards, and avoid default that way.

The housing price collapse that began in 2006 exposed the problems in the mortgage servicing industry. The rate of delinquent mortgages climbed rapidly, from less than 2 percent of mortgages to more than 10 percent today. The easy cures from yesterday were no longer usually available, such as second mortgages or large loans on a credit card. Instead, more than 10 million homeowners found themselves "under water" in a home they could not sell without losing money and thus in a new position—negotiating with mortgage servicers about whether they could stay in their homes, on what terms, and with what fees.

The precedent of the Fair Credit Reporting Act

This history of mortgage servicing shows the new ways that mortgage servicers hold power over many homeowners as the structure of the mortgage market has

A key disconnect

At present, the Fair Credit Reporting Act does not apply to mortgage servicing companies

	Fair Credit Reporting Act	Mortgage servicing
The companies that affect consumers	Credit reporting agencies, or CRAs	Mortgage servicers
The clients of those companies	Lenders, insurers, etc.	Investors in mortgages
Protections for consumers	Fair Credit Reporting Act	None currently

changed and its effects have become visible for the first time. This structure turns out to parallel exactly the problems that led to creation of consumer protections under the Fair Credit Reporting Act. (see Table)

This table shows the parallel structure of the credit rating market and the mortgage servicing market. For credit reports, the three major credit reporting agencies—Equifax, Experian, and TransUnion—dominate the market for consumers' credit histories. Mistakes and decisions about credit can have a large impact on a family, whether a mortgage or auto loan is approved, for instance, and on what terms. The clients of these credit agencies, however, are not consumers. Instead, the agencies make their money by selling credit reports to lenders, insurers, employers, and others. The market incentives for these companies are to give their corporate clients what they want, rather than to worry about how a mistake affects an individual consumer.

The history of the credit reporting agencies parallels the recent history in mortgage servicing. The credit reporting industry consolidated greatly during the 1960s. A series of congressional hearings showed that individual consumers often had serious mistakes in their credit histories, but the credit rating agencies had no good procedures to handle consumer complaints. For instance, the hearings showed that consumers lacked any protection when a lender incorrectly reported they had paid late, and individuals were turned down for loans and jobs as a result.

In light of these problems, Congress passed the Fair Credit Reporting Act of 1970, which gave individuals the right to see their credit history and to correct mistakes. Over time, Congress strengthened consumer protections under the FCRA, notably in overhauls in 1996 and 2004.

The same problems now plague the mortgage servicing market. First of all, the national market has consolidated into the hands of a few servicers. Secondly, these servicers make vital decisions about consumers, such as whether to forgive a late payment, modify a mortgage, or foreclose on the house, and with what (often large) fees paid by the homeowners. The clients, however, are financial corporations, such as investors or mortgage guarantors. These clients have their own complaints about the current system, as discussed above. The clients, however, at least have protection by contracts that say the servicers are supposed to act on the clients' behalf, and these contracts are the basis for current lawsuits against servicers.

Consumers have no similar protections. They are simply "third parties," people who are affected by the contract between the investor and the servicer but play no part in drafting the contract. As with the credit rating agencies, consumers have no choice about which servicer handles their mortgage. Consumers choose a mortgage originator when they get a mortgage but the originator now routinely sells that mortgage to an outside servicer with no choice in the matter for the homeowner.

In short, consumers exert no market pressure on servicers. A servicer can provide lousy service and the homeowner has no way to exit. Even if the consumer tries to refinance the mortgage, the new originator can sell the servicing rights to the same lousy servicer as before.

What to do next

This simple point has not been part of the public debate to date about mortgage servicing companies. The United States has long required effective consumer protection rules under the Fair Credit Reporting Act but the same sorts of problems in mortgage servicing currently lack any similar consumer law. Quite simply, there is a large market failure. Consumers are subject to bad service and large losses, with no effective market checks or legal redress in place.

The point of this issue brief is to point out the market failure rather than to propose the full set of possible policy responses. Yet there are some common threads that should inform the coming debate. New consumer protections could come from a variety of sources. First, it might usefully be part of the reform of Fannie and Freddie that Congress is scheduled to consider this year. The logic for fixing the mortgage servicing program through this legislative avenue is strong—any new system of housing finance must first have an effective payment system so consumer mortgage payments will flow correctly through the system to investors.

Second, and more immediately, consumer protection rules can be crafted into any settlement that the state attorneys general and federal regulators may reach soon with servicers in the robo-signing scandal. Third, the new Consumer Financial Protection Bureau might consider drafting mortgage servicing regulations once the Bureau is up and running next year. In addition, there have been press reports that financial regulators may include some consumer protections related to servicers in the proposed rule about "Qualified Residential Mortgages" that the Dodd-Frank Act mandated.

In terms of specific consumer protections, consumer and industry experts should weigh in on what the overall approach should include. To begin the discussion, here are three traditional categories of consumer protections to consider:

- Disclosure
- Deception
- Conflicts of interest

Let's consider each in turn.

Disclosure

Mortgage servicers should disclose their fee schedule, including for the contractors they hire in the foreclosure process. For credit and debit cards, we have seen new consumer protection rules around transaction and late fees. The risk of problems is even greater in mortgage servicing, where consumers have no option to exit from an abusive servicer.

Servicer fees are often paid out of the proceeds of a foreclosure, and a recurring complaint has been that such fees give too great an incentive to foreclose rather than work out a modification. Disclosure of a servicer's fees, perhaps both to the homeowner and to consumer protection enforcers, is an important first step toward reducing abuse.

Deception

The new lawsuit against Bank of America's mortgage servicing affiliate alleges employees were trained to mislead consumers who called with complaints about mortgage servicing. Regulators already have general powers to enforce against "unfair and deceptive practices" by servicers. They should do so.

More specific rules about common categories of deception are worth considering. As with FCRA, consumers perhaps should be entitled to moderate-sized statutory damages where a servicer has engaged in a pattern of deception.

Conflicts of interest

Most mortgage servicing today is done within the largest financial holding companies. One major concern about the current system is that the large servicers may be protecting affiliates who hold second liens on homes in the form of home equity loans, at the expense of the first-lien holders—the investors—who they supposedly work for. When conflicts of interest exist, consumers come third, after the investors and servicers, and the servicer has no legal duty to act in the consumers' best interest.

Other aspects of banking regulation have strict conflict-of-interest disclosures and regulations, such as the limits on transactions between an FDIC-insured bank and its affiliates. New measures should be considered to ensure that servicers are acting on behalf of investors and consumers, rather than for the benefit of their lending affiliates.

The way forward

The recent history of mortgage servicing highlights an important new development—only rarely does such a large, concentrated industry arise in ways that can have such important negative effects on tens of millions of consumers. There is little reason to think the system that developed during the housing bubble is the correct system going forward. FCRA provides a model for showing that the rights and needs of consumers should not continue to be ignored in our system for mortgage servicing.

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Endnotes

1 Andrew Martin and Michael Powell, "Two States Sue Bank of America Over Mortgages," *The New York Times*, December 17, 2010, available at http://www.nytimes.com/2010/12/18/business/18mortgage.html.